

11/14
No. 10203

United States
Circuit Court of Appeals
For the Ninth Circuit.

APARTMENT OPERATORS ASSOCIATION, a
corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the United
States Board of Tax Appeals

FILED

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PAUL E. CURRIEN

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES:

For Taxpayer:

E. J. MINER, C. P. A.
EDWARD E. MERGES

For Comm'r:

T. M. MATHER [1*]

United States Board of Tax Appeals

Docket No. 106666

APARTMENT OPERATORS ASSOCIATION,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency as set forth by the Commissioner of Internal Revenue in his notice of deficiency, (IT;90D:JW, dated December 16, 1940), and as a basis of its proceedings alleges as follows:

1. The notice of deficiency, (a copy of which is attached and marked Exhibit A), was mailed to the petitioner December 16, 1940.

*Page numbering appearing at top of page of original certified Transcript of Record.

2. The petitioner is a non-profitable corporation, incorporated under the laws of the State of Washington, with its office at 664 Empire Building, Seattle, Washington. The tax return here involved was filed with the Collector at Tacoma, Washington. The members of this corporation are owners and operators of apartment houses. Its purpose is that of securing and disseminating information of mutual interest among its members.
3. The taxes in controversy are Income Taxes for the calendar year 1938, in the amount of \$107.49, and excess profits taxes in the amount of \$103.19.
4. The determination of tax set forth in the said notice of deficiency is based upon the following error:

The petitioner is a non-profitable corporation. There is no outstanding capital stock, and no distributions are made to members. Practically all of the income of the corporation is derived from assessments against members of the organization. Any excess of income over expenses is due entirely to those assessments, which are voluntarily accepted by the members. No profit inures to the benefit of the members, or any one or more of them. The corporation does not have a profit. It manufactures nothing; it buys nothing to sell, and it sells nothing whereupon a profit could be realized. The alleged profit mentioned in

the notice of deficiency represents the excess of contributions of members over expenses which excess was used in the ensuing year's expenses. [2]

Whereupon, the petitioner prays that this Board may hear the proceeding, and find that there is no tax liability in this case.

E. J. MINER, C. P. A.

Counsel for Petitioner.

Alaska Building,

Seattle, Wash.

(Duly verified.) [3]

EXHIBIT A

No. 42420-W

SN-IT-3

TREASURY DEPARTMENT
INTERNAL REVENUE
SERVICE

Seattle, Washington

December 16, 1940.

Seattle Division

350 Federal Office Building

IT: 90D: JW

Apartment Operators Association

664 Empire Building

Seattle, Washington

Sirs:

You are advised that the determination of your income tax liability for the taxable year(s) ended

December 31, 1938, discloses a deficiency of \$107.49 and that the determination of your excess-profits tax liability for the year(s) mentioned discloses a deficiency of \$103.19 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Seattle, Washington, for the attention of IT: 90D: JW. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner.

By GEO. C. EARLEY

Internal Revenue Agent in Charge.

Enclosures:

Statement

Form of waiver.

JW-ah [4]

STATEMENT

IT: 90D: JW

Apartment Operators Association

664 Empire Building

Seattle, Washington

Tax Liability for the Taxable Year Ended December 31, 1938:

	Liability	Assessed	Deficiency
Income Tax	\$107.49	None	\$107.49
Excess-Profits Tax	\$103.19	None	\$103.19

In making this determination of your income and excess-profits tax liability, careful consideration has been given to the report of examination dated April 30, 1940; to your protest dated June 14, 1940; and to the statements made at the conferences held August 26, 1940 and December 3, 1940.

A copy of this letter and statement has been mailed to your representative, Mr. E. J. Miner, Central Building, Seattle, Washington, in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau.

It is held that you are not exempt from income and excess-profits tax under any provision of the Revenue Act of 1938.

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return.....	\$941.09
Nontaxable income and additional deductions:	
(a) Depreciation	81.17
Net income adjusted.....	<u>\$859.92</u>

EXPLANATION OF ADJUSTMENTS

(a) It is held that depreciation on your business assets in the amount of \$81.17 is allowable in the computation of your taxable net income for the year 1938. The schedule of income and deductions accompanying your return did not contain any deduction for depreciation. [5]

COMPUTATION OF TAX

EXCESS-PROFITS TAX COMPUTATION

Value of capital stock as declared in the capital stock tax return for year ended June 30, 1938.....	None
Net income for excess-profits tax computation.....	\$ 859.92
Net income subject to excess-profits tax.....	\$ 859.92
Excess-profits tax assessable (12 per cent of \$859.92)..<	103.19
Excess-profits tax assessed:	
Original, Account No. 866783.....	None
Deficiency of excess-profits tax.....	\$ 103.19

INCOME TAX COMPUTATION

Tax on Special Classes of Corporations

Net income for excess-profits computation.....	\$ 859.92
Less:	
Excess-profits tax (cash basis).....	None
Net income	\$ 859.92
Special class net income.....	\$ 859.92
Corporations with Net Incomes of Not More Than \$25,000	
Income Tax assessable; 12½% of \$859.92.....	\$ 107.49
Income tax assessed:	
Original, Account No. 866783.....	None
Deficiency of income tax.....	\$ 107.49

[Endorsed]: U.S.B.T.A. Filed March 17, 1941. [6]

[Title of Board and Cause.]

ANSWER

Comes Now the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein, admits, denies and alleges as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Denies that the petitioner is a non-profit corporation, and alleges that petitioner is in a business ordinarily carried on for profit. Admits that petitioner was incorporated under the laws of the State of Washington and has its office at 664 Empire Building, Seattle, Washington. Admits that petitioner filed its return with the Collector at Tacoma, Washington. Admits that petitioner owns and operates apartment houses. Denies the remaining allegations contained in paragraph 2 of the petition. [7]

3. Admits that the taxes in controversy are income and excess-profits taxes for the calendar year 1938, but denies the remaining allegations contained in paragraph 3 of the petition.

4. Denies that the Commissioner erred as alleged in paragraph 4 of the petition. Denies the allegations of fact contained in said paragraph 4 of the petition.

5. Denies generally and specifically each and every material allegation contained in the petition, not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's appeal be denied and that the Commissioner's determination of deficiency be approved.

(Signed) J. P. WENCHEL,

BHN

Chief Counsel,

Bureau of Internal Revenue.

Of Counsel:

ALVA C. BAIRD,

Division Counsel.

B. H. NEBLETT,

Special Attorney,

Bureau of Internal Revenue.

Accepted for Defense Apr. 5, 1941.

BHN: mo 4/5/41.

[Endorsed]: U.S.B.T.A. Filed Apr. 14, 1941. [8]

TESTIMONY

[Title of Board and Cause.]

Federal Office Building,
Seattle, Washington,
September 8, 1941.

Met pursuant to notice.

Before: Hon. John M. Sternhagen.

Appearances: Edward E. Merges, Esq., 1012 Lowman Building, Seattle, Washington, appearing for the petitioner.

T. M. Mather, Esq., 1215 Smith Tower Building,
Seattle, Washington, appearing for the respondent. [10]

PROCEEDINGS

The Court: Docket No. 106666, Apartment Operators. Who appears for the petitioner?

Mr. Merges: My name is Edward Merges, if the Court please. I would like to state to the Court and counsel at this time that I have not been admitted to practice before the Board of Tax Appeals. I wrote a letter to the clerk in Portland telling him what the situation was, and I discussed it with him this morning, and I have prepared an application and will submit it immediately upon the proceeding of this matter.

The Court: Have you read the rules?

Mr. Merges: Yes, your Honor, I have.

The Court: Are you in all respects eligible for admission to practice?

Mr. Merges: I am, your Honor.

The Court: I will recognize you for the purpose of this case with the understanding that you will complete your application and admission promptly.

Mr. Merges: Thank you.

Mr. Mather: T. M. Mather, for the respondent.

The Court: Proceed.

STATEMENT OF CASE ON BEHALF OF THE PETITIONER

Mr. Merges: If your Honor please, the issues

of this case are quite simple. The only issue is whether or not the [12] Apartment Operators Association of Seattle is subject to income and excess profits tax for the year 1938.

The petitioner is a non-profit corporation formed under the laws of the State of Washington relating to non-profit corporations. There is no outstanding capital stock, no distributions are made to members of any kind, and practically all the income of the corporation is derived from assessments of members.

There is no profit enuring to the benefit of any of the members.

The corporation manufactures nothing and does not attempt to distribute any profits to its members.

The petitioner claimed exemption under Section 101 of the Income Tax Laws, Sub-Section 7, which reads, "Business leagues, chambers of commerce, real estate boards, or boards of trade not organized for profit, and no part of the net earning of which enures to the benefit of any private shareholder or individual."

The purpose of our case, if your Honor please, principally, is to present to the Court a picture of just what the Apartment Operators Association is.

The Court: What do you claim to be within the language that you read there?

Mr. Merges: We claim to be, your Honor, first——

The Court: A business league? [13]

Mr. Merges: Yes. I think that is really our whole case, your Honor.

Mr. Mather: If your Honor please, this appeal involves the deficiency of \$107.49 income tax, and \$103.19 excess profits tax for the year 1938. The only question is the question of whether or not the petition should be exempt.

The Court: Did the petitioner claim exemption originally and pay no tax?

Mr. Mather: If your Honor please, no return was filed by the petitioner. Then, when the return was due, later, a return was filed in which they claimed exemption. They reported no income. It is the position of the respondent that the petitioner is engaged in business, and in the type of business normally carried on for profit.

I think the evidence will show that it bought and sold merchandise at a profit; that it published a journal and accepted advertising in that publication.

Now, those are operations that are normally carried on at a profit. They claim a deficiency on that basis.

The Court: Make your case, Mr. Merges.

Mr. Merges: Mr. Williams, will you take the stand, please?

HARRY T. WILLIAMS

a witness on behalf of the Petitioner was duly sworn and testified as follows: [14]

(Testimony of Harry T. Williams.)

Direct Examination

Q. (By Mr. Merges): Will you state your name to the Court, please?

A. Harry T. Williams.

Q. Will you state your official capacity with reference to the Apartment Owners' Association?

A. Executive Secretary and Treasurer.

Q. And how long, Mr. Williams, have you been so engaged?

A. During the past sixteen years, or seventeen years.

Q. Are you familiar with the business carried on by the association? A. Yes.

Q. Are you familiar with the corporate setup?

A. Yes; I am one of the incorporators.

Q. Will you tell me when the Apartment Owners Association was incorporated?

A. December 3, 1937, I think it was.

Q. And was it incorporated, Mr. Williams, under Section 3888 and subsequent sections of Remington's Revised Statutes relating to corporations not formed for a profit?

A. It was a non-profit organization.

Q. Will you tell me, Mr. Williams, the objects and purposes of this corporation?

A. The usual objects and purposes of any trade association is to gather and disseminate information of benefit to its [15] members in the operation and conduct of their business, to promote uniform business methods, and in general, to do everything

(Testimony of Harry T. Williams.)

possible to promote the best interest and welfare of the members in so far as the particular business of theirs might be applicable to the association's business, which was a profit operation.

Q. Are there any certificates of stock issued to members? A. None.

Q. Are any dividends paid to members?

A. None.

Q. Just what benefit do the members of the association derive from it, Mr. Williams?

A. The receipt of information affecting their business gathered from all parts of the nation, the exchange of experiences, good and bad, in order that they might adjust their own business to derive the greatest possible benefits from their investments.

Q. Could you, in order to make this matter—that is, the functions of the association entirely clear to the Court, give us a few examples of what the association does for its members?

A. Well, it conducts, amongst other things, a tenant reporting system in which the operators report to the association their experiences with the tenants, which are filed in the office, who have space in apartment buildings and who have access to them. [16]

Q. What was the last of that, please?

A. Which are filed in the office, and to which they have access.

Q. And what is the purpose of that?

A. In respect to prospective tenants that might apply for space in their buildings. That is to pro-

(Testimony of Harry T. Williams.)

tect the industry, of course, against destructive or non-pay tenants.

Q. What is the information that you disseminate?

A. The legislative, general information, general business information, especially that which specifically applies to apartment houses, legislative trends, the effect of legislation upon the business, and guidance and counsel to keep them in line with legislation. In other words, to do everything possible to promote their common welfare in the business.

Q. Is it true that if a tenant or, rather, if a member, owner, or operator, has some difficulty with some tenant or some problem in the operation of his apartment, that he is privileged to and frequently does consult the association?

A. That is right. Any problem that would arise in their business, they can take it up with the association for the purpose of having available the accumulative experiences of the association in problems of like nature.

Q. Do any of the members of the association receive any dividends in any form whatsoever?

A. None. [17]

Q. I believe something was said in counsel's opening statement regarding the selling of goods or certain items of personal property. Would you describe to the Court just what the association does in that line?

A. Well, we have, for instance, printers' sup-

(Testimony of Harry T. Williams.)

plies for our members, forms peculiar to apartment operation, the majority of which are not available. The only way you could get them, you would have to have some printer make them up for you and, of course, the individual member having it done, the cost would be too great; so through their association, they collectively order a large quantity at once. The forms are designed by the association for the specific application in this locality. For instance, our receipt books differ from the common receipt book bought in a store, you could not buy one like it; you would have to have it printed. We prepare those forms, and they are broken down to approximately cost and sold to the membership. Naturally, we have to preserve a margin for set *losse*, and so forth.

Q. Could you name some article of personal property that is sold by the association to its members or, rather, purchased by the association for its members?

A. Well, that is practically the bulk of our printed forms; it is about the bulk of what we call our purchase and supply department.

Q. It is your testimony, then, Mr. Williams, that the Apart- [18] ment Operators Association acts as a sort of a purchasing agent for its members with regard to certain articles relating to the operation of apartment houses?

A. That is correct.

Q. And does the association make any——

A. (Interposing): May I amplify that?

(Testimony of Harry T. Williams.)

Q. Surely.

A. As a matter of fact, a member will call us in respect to some peculiar need of his. It is a part of our function to find out for him where the article can be obtained, and it is a part of our function to see whether we can obtain it for him at a lower cost.

Q. Does the association make any profit from the sale of these articles?

A. No. The price is broken down as close to cost as we dare go and, in establishing the cost, of course, it is the actual purchase cost—the unit cost of the bulk purchase. In other words, there is no overhead; there is no overloading of the proper charges that would go in an ordinary retail business. For instance, no portion of the rent or the wages of employees. The other expenses of the association, that is all paid out of dues. In other words, it is a peculiar incidental service to the members.

Q. Does the association make any profit in any other way?

A. It did publish a journal, and that was discontinued, with [19] a great deal of pleasure on my part, and as soon as we found that that was, or might be the subject of income tax. That was not only an expense, but a headache to us.

Q. What was the purpose in publishing the journal?

A. For the purpose of gathering and disseminating among our membership the information that

(Testimony of Harry T. Williams.)

was gathered from the four corners of the nation affecting the apartment business.

The Court: When was that published?

The Witness: It was published monthly in the form of apartment——

The Court: I mean at what time did you publish it and at what time did you stop it?

The Witness: It was being published—we had one on and off during the entire life of the association. It was a voluntary association up until 1937, and it was incorporated. It was published during this year in question here in 1938, with the exception of two months, I believe, in that year. We used to skip months from time to time.

The Court: When did you stop publishing it?

The Witness: After we found there might be a question as to——

The Court: When was that?

The Witness: That was in 1939.

Q. (By Mr. Merges): That was after the year 1938?

A. Yes, that was after the year 1938. [20]

Q. What was the contents of this journal, principally?

A. Purely—Well, for instance, there was legal comment—comment on legal cases affecting apartment operations—legislative comment on legislation affecting it. Then there were technical articles on apartment operation gathered from other apartment publications in the nation.

Q. And did you find it a more efficient way,

(Testimony of Harry T. Williams.)

and a cheaper way, of disseminating this information to your members than by letter or pamphlet?

A. Naturally, because in one issue, in general, we might cover twenty or thirty subjects which would require rather numerous correspondence. The postage and the cost of disseminating information that way would have been prohibitive; so by the expedient of firms who were supplying apartment houses, advertising in the journal. That, of course, bore a portion of the expense. The journal, in our books, of course, no attempt was made to break down the overhead. Until this matter came up, we had never done it, and then we found that, of course, we were operating both the journal and the supply department under a heavy loss. The only gain that we could possibly have in the association was through dues.

Q. Did the journal ever make a profit in its history?

A. A paper profit, yes. That is, in other words, the income was greater than the outgo for the journal alone; but there was no remuneration for the services of the editor and the rent, [21] and so forth, and so on. It could not possibly be published except as an incidental service to the members through the trade association.

Q. What was done with the profit or surplus of the association, if any?

A. Well, the substance of the association, which is the ideal, of course, of any trade association—

(Testimony of Harry T. Williams.)

it is the ideal of any trade secretary, of course, to have a cushion for twelve months' operation if he possibly can, in case of adverse circumstances. We have never been able to do better than three or four months. The surplus practically amounts to the cost of three to four months' operation. We have never been able to get it any higher.

Q. Showing you this document, Mr. Williams, will you tell me what that is?

A. That is the copy of the Articles of Incorporation of the Apartment Operators Association.

Q. That is an exact copy of the original Articles of Incorporation, is it? A. It is.

Q. And the By-Laws attached to it, are they exact copies of the By-Laws of the corporation?

A. They are.

The Court: They were the ones that were in effect during the year 1938, were they? [22]

The Witness: Yes, sir.

Q. (By Mr. Merges): These Articles of Incorporation, do they bear the date of 1937?

A. Yes, December 3, I think is the exact date. They—that was prior—Well, prior to that we were a volunteer organization.

Q. You were, in 1938, operating under this corporate setup? A. That is right.

Q. And you still are? A. We still are.

Mr. Merges: I will offer this in evidence.

Mr. Mather: No objection.

(The document, heretofore marked for identi-

(Testimony of Harry T. Williams.)

fication as Petitioner's Exhibit 1 was received in evidence.)

[Petitioner's Exhibit No. 1 is set out at page 48 of this printed record.]

Q. (By Mr. Merges): Mr. Williams, is there anything that you might like to add in order to inform the Court as to just what the association is?

Mr. Mather: I will object to that question.

The Court: I will sustain the objection.

Mr. Merges: I think that is all. You may inquire.

Cross-Examination

Q. (By Mr. Mather) Do I understand, Mr. Williams, your testimony is that the only merchandise the corporation sold in 1938 was receipt books?

A. Oh, no. No, they had a blanket contract for electric light [23] globes, for instance. They had a blanket contract with the Seattle Hardware Company—that is, a blanket contract covering its member uses. The members, then, would draw upon that stock. That price was broken down—to be exact, during 1938, that price was broken down to—oh, it was approximately 30% below—the association received 36%, and the members received 32—a discount of 32.

Q. What was the extent of the sales which you made in 1938?

A. May I refresh my memory here (witness referring to a paper)? You have it in the other book,

(Testimony of Harry T. Williams.)

Mr. Merges. Do you want it for the full year or monthly?

Mr. Merges: The full year—your sales for the full year.

The Witness: The full sale of supplies was \$733.33.

Q. (By Mr. Mather) For the year 1938?

A. Yes, for the year 1938.

Q. Will you give me that figure again?

A. \$733.33.

Q. That was all the merchandise that the corporation sold?

A. That was everything in the nature of supplies.

Q. And how much did they receive from advertising in the journal in 1938? A. \$2,519.09.

Q. Now, the corporation did file an income tax return in 1938, did it not? [24] A. Yes, sir.

Q. And attached to that return were certain schedules. That return has sales of merchandise of how much? A. \$1,352.08.

Q. Is that correct?

A. I beg your pardon. Looking here at cash sales of supplies, accounts receivable, \$618.75. That was my error. That makes the total here.

The Court: Now wait a minute. That doesn't mean anything in the record. You have got to distinguish between when you are talking about what the return shows and what you have before you.

The Witness: Well, that was my error. The figure that I gave was the cash sales of supplies.

(Testimony of Harry T. Williams.)

The Court: On the books, do you mean?

The Witness: Yes. Now, under receivable, you find \$618.75 which, of course, makes up the difference here.

Q. (By Mr. Mather) All right. Now, what were the gross sales of the corporation for the year 1938?

A. \$1352.08.

Q. And those sales in 1938 were made to whom?

A. Members of the Association.

Q. And other than receipt books, what sort of merchandise was sold?

A. Electric light globes. [25]

Q. Anything else?

A. There might have been in that year some items, for instance, some electrical equipment ordered, and in that case there is no reflection here at all. It would be paid for by the members at cost. It was only when the supplies were handled through the office that there was any breakdown at all through the year.

The Court: Now, do you know, in fact, there was something else?

The Witness: Oh, yes, I do. I do know that there were quite considerable items, but no charge went through the association books on it. It wasn't even on our—we just ordered it and delivered to the members, and the members would make their own payments.

Q. (By Mr. Mather) You bought the merchandise, did you not?

(Testimony of Harry T. Williams.)

A. This merchandise, yes.

Q. You bought the merchandise, the total sales of which in the year 1938 represented \$1352.08?

A. Yes, sir.

Q. You bought that from wholesale houses, did you not? A. Yes.

Q. And you sold that merchandise to your members? A. Yes.

Q. And the members paid you for it?

A. Yes. [26]

Q. And that is what this \$1352.08 represents, is it not? A. That is right.

Q. Now, what was the nature of the advertising that you published in your journal?

A. The nature of the advertising?

Q. Yes.

A. Do you mean in connection with the supplies?

Q. No, in connection with the journal.

A. Oh. It would be the advertising from firms. For instance, it might be the telephone company, the City Light, the Puget Sound Power & Light, furniture firms, or people that dealt with apartment houses.

Q. The journal solicited that advertising from these people, did it? A. Yes.

Q. And the journal, as I understand it, has been published continuously up until 1939?

A. Not continuously.

Q. Well, when did they——

(Testimony of Harry T. Williams.)

A. (Interposing) Spasmodically. Sometimes it would run for—whenever the journal advertising receipts were not sufficient in volume, they would just take the bull by the horns and suspend publication until they did get sufficient advertising to justify publishing it.

Mr. Mather: That is all. [27]

Redirect Examination

Q. (By Mr. Merges) Can you tell us, Mr. Williams, the amount of your purchases in 1938 that were sold to tenants? A. \$977.07.

Q. And there is, of course a differential between that and the amount that you received from the tenants for it? A. Yes.

The Court: I wasn't sure whether I understood you correctly, but I think you said "tenants" in both instances. Now, just what did you mean?

Mr. Merges: I mean members of the association. I beg your pardon, your Honor. I ask the clerk, or, rather, the reporter, to make the change. I am so used to talking about tenants in this organization that I don't seem to get over it.

Q. (By Mr. Merges) Will you now tell the Court what was done with this differential?

A. It went into the general income; it went into the general fund of the association.

Q. And has any of this general fund ever been distributed to anyone? A. No, sir.

Q. What do you intend to do with this general fund? I take it you have some surplus there.

(Testimony of Harry T. Williams.)

Mr. Mather: That is objected to as irrelevant and immaterial. [28]

The Court: Sustained.

Q. (By Mr. Merges) What have you done with the general fund to date?

A. We have used it for association activities—for association expenses.

The Court: Such as what?

The Witness: We maintain from the headquarters—we hire help. We have never had sufficient help yet. We try to expand as rapidly as we can—that is, we are looking ahead for the future.

Q. (By Mr. Merges) Where are your headquarters, Mr. Williams?

A. In the Empire Building. 664 Empire Building.

Q. And how many offices do you have there?

A. Four.

Q. Four rooms? A. Four rooms.

Q. And you have items of office equipment such as a typewriter, and so on?

A. Oh, yes. As a matter of fact, the majority of our printed forms, we make ourselves on a duplicator. We make these forms, remember, under the instructions of the members. We are not in any sense of the word—we only make the forms that the members, by their voting in the association, signify that we should make for them.

The Court: Do you mean to say that this fund, in which [29] you put these differentials, as you call them,—

(Testimony of Harry T. Williams.)

The Witness (Interrupting): To our general fund.

The Court: You understand that that general fund is used for the payment of the ordinary expenses of the organization, such as salary, furniture, and fixtures, equipment, and that sort of thing?

The Witness: Yes, sir.

Q. (By Mr. Merges) And you draw a salary as Executive Secretary, do you? A. Surely, I do.

Q. And you have a stenographer and bookkeeper, do you? A. And a field man.

Q. And a field man? A. Yes.

Q. And all those——

A. (Interposing) There are three permanent employees.

Q. And they are all paid out of this——

A. (Interposing) All paid out of——

The Court: Now, wait just a minute. I am going to tell you now not to do that any more. Read that question, Mr. Reporter, and let the question be finished.

(Whereupon, the reporter read as follows:)

“Question: And they are all paid out of this——”

Q. (By Mr. Merges) They are all paid out of this surplus fund?

A. Yes. I can't answer it without—it is not the surplus [30] fund, it is the general fund. It is the general, active fund of the association; there is no special fund.

(Testimony of Harry T. Williams.)

The Court: Is that what you call a fund any different from the moneys that you get from dues?

The Witness: No; it is all together; the dues. It all goes in—we just have one fund—general income.

Q. (By Mr. Merges) Do you mean to state that your dues, the receipts from the sale of these items of personal property and the receipts from the journal have all gone into one general fund?

A. That is right.

Q. And that fund is used to pay the expenses of the office and the salaries of the employees of the association?

A. That is right.

The Court: It is accumulating? It is getting larger?

The Witness: Right now it is stationary. It just so happened in 1938 we had just incorporated and came under a labor agreement, which accounted for a step-up in our membership—that is the people who would prefer to handle their labor relations through the association than as individuals. That accounted for a rather marked pick-up in membership. Prior to that, if we had two or three hundred dollars of a balance, we were lucky. Since that time, though, the membership has greatly enlarged, and we run now slightly better than \$2,000 of a balance. [31]

The Court: Do you mean there are \$2,000 at the end of the year in excess of the amount that you have needed to pay expenses?

The Witness: Yes. At the end of each month or at the end of the year.

(Testimony of Harry T. Williams.)

The Court: And has that amount been expanding? Has that surplus been expanding or not?

The Witness: It has remained fairly stationary. During 1938, it did expand.

The Court: And had it expanded before that time?

The Witness: It has gone up and down. In the time of trouble, for instance, such as during the depression, why, our membership, of course, was decimated.

The Court: You had \$2,000 in 1938?

The Witness: No. No, in 1938 we had \$1565.

The Court: And how did that compare with earlier years?

The Witness: Earlier years?

The Court: Yes.

The Witness: I have right before me here the—No, I would have to look at the—

The Court: Generally speaking, was the \$1500 larger than the year before?

The Witness: Yes, much larger.

The Court: Was that larger than the year before that?

The Witness: That was much—yes, it gradually grew [32] up as we came out of the depression.

The Court: From 1929 on?

The Witness: In 1929 we were about at our maximum then. That was about our high spot prior to this incorporation in 1937, and then we had—I am speaking from memory now, of course. I would

(Testimony of Harry T. Williams.)

have to check on figures, but it would be usually two or three hundred dollars of a balance. If it was any more than that we would——

The Court: But the balance has improved each year, so that each year at the end, you turned a larger balance in the next year than you had before?

The Witness: And in 1938 the balance had grown——

The Court: The balance had grown to be about \$1500, and that, in turn, grew to be about \$2,000, where it is now?

The Witness: Yes, that is about stationary now. It has about reached our peak.

The Court: And how long has it been stationary?

The Witness: We have, however,—after we discontinued the journal, it was necessary to increase dues, and the dues were increased by practically double.

The Court: That is in 1939?

The Witness: Since 1938, your Honor; and that two thousand dollars now is just stationary, but it is under a greatly increased dues, because our mailing—of course, after we discontinued the journal, there was a great deal more postage and many more [33] letters to be sent out to cover the subject. We couldn't use the journal.

Q. (By Mr. Merger) What is the policy of the association with reference to this surplus? Is it to allow it to grow and grow and grow?

A. No. As I said, the ideal, of course, is to have

(Testimony of Harry T. Williams.)

a cushion which will cover one year's operation, if you can ever obtain that. That is the goal of every trade association secretary. It is like a great many ideals, which is seldom attained.

Q. (By Mr. Mather) You have a cushion now to cover about how long? How long now could you operate under your present surplus?

A. Under our present surplus?

Q. Yes. A. Not to exceed four months.

Mr. Mather: That is all.

Mr. Merges: That is all.

The Court: Stand aside.

(Witness excused.)

Mr. Merges: Call Mr. Miner.

J. MINER

a witness on behalf of the Petitioner was duly sworn and testified as follows:

Direct Examination

Q. (By Mr. Merges) Will you state your name to the Court, [34] please?

A. J. Miner.

Q. What is your profession, Mr. Miner?

A. I am a public accountant.

Q. And what connection in that regard do you have with the Apartment Operators Association?

A. I have been an auditor of the books of that association for a number of years.

Q. And did you prepare a report and audit

(Testimony of J. Miner.)

in 1938 of the Apartment Operators Association?

A. Yes, sir.

Q. Is this report prepared by you?

A. Yes, sir.

Q. Was this taken from the original books and records of the association, made in the regular course of business? A. It was.

Mr. Merges: I will offer this in evidence.

Mr. Mather: It is objected to as not the best evidence; not within any of the issues in the pleadings. There is no question raised with respect to the income of this organization. The only error that is alleged is that the organization is exempt.

Mr. Merges: I would like to show, your Honor, just exactly what the financial setup of this organization is. The amounts that have been expended for various things and the [35] surplus and the expenses of the organization. There is some contention that, for example, that this journal has made a profit; that is, that it is operated for profit, which shows that there was a loss on the journal alone of \$899.

The Court: Well, the present objection is that this is not the best evidence, which means that the books from which this was taken are the best evidence.

Mr. Merges: I have the original books, if the Court please, and I can introduce them. However, the original books—the witness testified that this was taken from the original books, and the

(Testimony of J. Miner.)

original books would be rather long for the Court or anyone else to go through; but I have them in court, and I can introduce them. This is merely a short cut.

The Court: The purpose for which it is introduced or offered, Mr. Mather, if you want to, you may cross-examine the witness to see whether it should be received. I don't think it is necessary for us to exclude it because it isn't the best evidence, as long as the books are in the court room.

Mr. Mather: The second part of my objection, if your Honor please, is that it is not in any of the issues raised in any of the pleadings in this case.

The Court: I think the question of exemption, under the statute, as to whether any of the—as to whether there are any of the profits paid to any individual—any private [36] individual, justifies the introduction of evidence as to the finances of the year, in so far as those finances can be properly proven. Now, if you insist upon the books themselves, I should think you would probably have the right to have them; but this might be an easier way to get at them, and let you examine the auditor's report before we exclude them.

Mr. Mather: Very well. I would like to see it.

Q. (By Mr. Mather) Mr. Miner, Exhibit 2 of this document has cash disbursed for the year 1938. Are those figures taken from the books for the year 1938? A. Yes, sir.

(Testimony of J. Miner.)

Q. Did you have anything to do with the preparation of the return for the year 1938?

A. Yes, our office did.

Q. Will you tell me what the difference is between the expenditures shown in the return and the expenditures shown in your audit report?

A. Yes, sir.

Q. What is that difference?

A. The audit report is a statement of cash—actual cash disbursements, including all items of cash disbursed. The statement to which you refer——

The Court: In the return?

The Witness: In the return, is an analysis of the general expenses to be allocated to the departments of the [37] operation.

Q. (By Mr. Mather) Is that taken from the books, too?

A. Yes; it was taken from the books. That is a statement of the expenses to be allocated to the departments. It is a complete exhibit of the cash disbursements.

The Court: Why shouldn't the sum of one be equal to the sum of the other?

The Witness: If you take all of the expenses, they would; but that is only a part of the expenses to be distributed to the various departments. Some of those were returned direct.

The Court: Well, I don't understand what that means. What disbursements are there that are not chargeable to any department?

(Testimony of J. Miner.)

The Witness: For one thing, the purchase of supplies for resale. The actual disbursements for that was \$977.07; that is not the expense of any departmental expenses.

The Court: So that would not be shown on the schedule appended to the return?

The Witness: That is right.

Q. (By Mr. Mather) Is that the only item?

A. Well, I don't believe that this item of the expense for printing the journal, \$1374.20. That was covered, to a large extent, through advertising, and that was not a departmental expense of the association. [38]

Q. And that is included in your expenditures?

A. Yes, sir.

The Court: But not on the schedule appended to the return?

The Witness: No, sir; not as an expense to the departments.

Q. (By Mr. Mather) Well, now, the schedule attached to the return shows net income for the year ended December 31, 1938, of \$941.09. Is that net income as it appears on your books of the company for the year 1938?

A. The 1938 audit report.

Q. Now, if you don't understand the question. I will reframe it; but the question was—— Will you read it, Mr. Reporter?

(The question referred to was read by the reporter.)

(Testimony of J. Miner.)

A. No.

Q. The books don't show that net income of \$941.09? A. No, sir.

Q. Do you know where the figure came from, \$941.09? A. Not off-hand.

Q. Did you have anything to do with the preparation of that return?

A. Not this return, no.

Q. What return did you have something to do with? A. This one—this audit report.

The Court: You answered the question before as to the [39] return, and by the return, I mean the return, and I don't mean report. You said when you were asked whether you prepared the return, you said, "Our office helped to prepare that return." Now, am I to understand that you, or your office, did not help prepare that?

The Witness: Someone in our office did, your Honor; but I did not, and I cannot answer that question about this return.

Q. (By Mr. Mather) You don't know where the \$941.09 does come from; is that right?

A. No, not exactly; but I know what this statement shows.

Mr. Merges: And by, "this statement" you mean the statement of income and disbursements?

The Witness: Yes, sir.

Mr. Mather: That is all.

The Court: What about the offer of the audit report? That is what this examination was conducted about. Do you object to it?

(Testimony of J. Miner.)

Mr. Mather: Well, I won't press my objection with respect to it being the best evidence. I will object to it for the other reasons that I have stated.

The Court: I will overrule the objection. Received.

(The document referred to was marked Petitioner's Exhibit No. 2 and received in evidence.)

[Petitioner's Exhibit No. 2 is set out at page 78 of this printed record.]

Q. (By Mr. Merges) Can you tell me, Mr. Miner, from this [40] report, the net profit, if any, for the year 1938? A. Yes, sir.

Mr. Mather: We object to that, your Honor, as calling for a conclusion of the witness.

The Witness: Now, there are a lot of elements that go into profit.

The Court: The report is in evidence. Why is it necessary to have the witness read what is on the report?

Mr. Merges: I will withdraw the question.

(The witness figuring on the paper.)

The Court: Now, don't do any figuring on that paper.

The Witness: Yes, sir. I will erase it.

The Court: You had better erase it.

(The witness doing as requested.)

Q. (By Mr. Merges) As far as you know, that report presents a picture of the income and dis-

(Testimony of J. Miner.)

bursements of the Operators Association during the year 1938, Mr. Miner?

Mr. Mather: That is objected to as leading.

The Court: Overruled.

Mr. Merges: Will you read the question, please?

(The question referred to was read by the reporter.)

A. This presents a full analysis of the cash receipts and the cash disbursements from the beginning, balance of cash on hand and the net earnings—cash on hand.

Q. Have you, in your experience as auditor for the association [41] ever heard of their distributing any benefits or dividends to their members out of the profits of the——

Mr. Mather: That is objected to as irrelevant and immaterial and hearsay.

The Court: Sustained.

Mr. Merges: I think that will be all.

The Court: Is there anything further from this witness?

Mr. Mather: No cross-examination.

The Court: That is all.

(Witness excused.)

Mr. Merges: Call Donald C. Haas.

DONALD C. HAAS,

a witness on behalf of the Petitioner, was duly sworn and testified as follows:

Direct Examination

Q. (By Mr. Merges) Will you state your name for the record, please? A. Donald C. Haas.

Q. What is your connection with the Apartment Operators Association, if any, Mr. Haas?

A. I am president of the organization.

Q. Do you receive a salary for your work as president? A. I do not.

Q. Who assists you in the management of the corporation; that is, is there a Board of Trustees? [42]

A. There is a Board of Trustees, yes.

Q. What is their function? How often do they meet?

A. They meet regularly once a month for the purpose of auditing the bills and managing the association; and they also meet on special call whenever necessary.

Q. And what persons does this Board of Trustees consist of?

A. Members of the organization.

Q. Do they receive any salary for their services?

A. They do not.

Q. Were you familiar with the affairs of the association in 1938?

A. Yes; I was a trustee then.

Q. As trustee, did you have occasion to ex-

(Testimony of Donald C. Haas.)

amine the books, and were you acquainted with the disbursements made by the association?

A. Yes.

Q. Was there any distribution of profits, or benefits, to members? A. There was not.

Q. Is the association operating now in substantially the same fashion that it did in 1938?

A. It is.

Q. You heard the testimony of Mr. Williams?

A. I did.

Q. Is it true and correct, as far as you know? [43] A. It is.

Mr. Mather: Now, if your Honor please, I object to that question for the reason that I don't know what part of this testimony is being referred to.

Mr. Merges: His entire testimony.

Mr. Mather: I beg your pardon.

Mr. Merges: I am merely trying to shorten this up. I could go through all those things if you like, counsel. I would be very glad to, but I am merely trying to shorten the hearing. If you would like me to ask him the questions that I asked Mr. Williams, or further details of the operation of the association, I would be very pleased to do so.

Mr. Mather: You will have to judge for yourself, counsel.

Q. (By Mr. Merges) What would you say, from your experience and knowledge of the association, Mr. Haas, is the purpose of it?

(Testimony of Donald C. Haas.)

A. The purpose of the Apartment Operators Association is to assist the individual apartment owners and lessees in the better conduct of their business and to make a more successful apartment operation in the city as a group, and to protect the individual apartment owner when necessary; also to give an opportunity for the different members to meet together and discuss their mutual problems, and to work out solutions to them and to advise the membership of tenants, [44] on request by the individual members, who have defrauded or refused to pay, or caused damage to other members in their buildings, and work of that kind; to act as a buffer between the union and themselves in cases of labor arbitration matters.

Q. Incidentally, Mr. Haas, one of the principal functions of your association is to represent independent operators in negotiations with the labor union; is that not right?

A. That is right.

Q. And you negotiated your first agreement in what year? A. 1937.

Q. In June?

A. I believe it was in June, yes.

Q. And do you have meetings with representatives of the labor unions? A. We do.

Q. And would you describe to the Court just what takes place at those meetings, and how frequently they are held, and the purpose of them?

A. We just completed one meeting—one series

(Testimony of Donald C. Haas.)

of meetings that took place—they started in May and just completed here a week ago, in which the contract between us and the Building Service Employees Union was adjusted and modified to take care of the increased cost of living, and certain other matters that have come up that the union didn't feel were being held in a proper manner, and we adjusted them by [45] having meetings regularly with a committee from the union; that is one of the operations. Also, if any individual member, or any member of the union, have a misunderstanding, we have a special committee that handles that difficulty, and it is of very great service to the members.

Q. Do you have a special room in your office for such things as that—and by your office, I mean the association office? A. We do.

Q. And how are controversies handled there between individual members and the union?

A. The individual member is privileged to come to the room. We have a special room for that; and the secretary of the association represents the association, the union represented by the business agent, and the union member is represented by the business agent for the Apartment House Division. The case is heard, on both sides, and if the chief business agent of the union and the secretary of the association can reach a decision on which they are mutually agreed, that settles the case then and there. Their decision is final. But, if they dis-

(Testimony of Donald C. Haas.)

agree, it goes to a larger committee, composed of three members of the union and three members of the association, and they meet and pick an outside individual to make the seventh member, to settle any question that goes beyond the control of the secretary and the chief business agent of the union. Does that answer your question? [46]

Q. Yes. Is any charge made to the individual members for this service?

A. There is no charge.

Q. Have you been able to avoid any picketing or strikes, by these conferences?

A. Only in cases—there has only been picketing in cases when the individual owner would not abide by the decision mutually agreed to between the secretary of the association and the chief business agent of the union. That is, members of the Apartment Association. There has been outside picketing of non-members.

Q. And just how does the association manage the sale of these articles of personal property that we have been talking about, such as rental agreements, and slips, and forms of various kinds?

A. Rental agreements are printed by the association for the members. We have a little machine in the office that does that. We are able to do that for the members much more reasonably than the members could have the forms printed themselves in small bunches outside. We have a plate made, and they are printed just at the cost of the Apartment

(Testimony of Donald C. Haas.)

Association to print them. It is purely a service to members. There is no profit or anything like that made on them. Does that answer your question?

Q. It does. And, what about the journal? [47]

A. The journal was operated on this basis: When this organization was started, we felt we should have some way of getting information to our members, and we couldn't afford to write them all letters about every little matter that came up, and there were numerous things that came to the organization; so we conceived upon the idea of putting out a small publication with enough advertising to pay the cost of its operation, and in order to save mailing out letters, the idea of the journal was brought forth, and it was operated on that basis entirely. It was just as a means of disseminating information.

Q. And the membership determines the amount of dues, does it not?

A. Yes, it does. Of course, the larger the membership, the more the dues.

Q. Now, you don't understand my question. I mean the amount of the dues payable by the members are set and determined by the membership of the association?

A. Oh, absolutely. The amount can be changed whenever—at the will of the organization—the individual members of the organization at any regular meeting. It can be brought up, and I believe it has to go through two or three meetings before it can be finally passed—before it can be definitely changed.

(Testimony of Donald C. Haas.)

Q. And is it the policy of the association to keep these dues [48] just large enough to provide a comfortable surplus to take care of any emergency?

Mr. Mather: That is objected to as leading, if your Honor please. I don't think there is any occasion to lead this witness.

The Court: I think that is true.

Mr. Merges: May I ask to reframe the question, your Honor?

The Court: Yes.

Q. (By Mr. Merges) What is the policy of the association with regard to determining the amount of dues payable by the members?

A. The dues paid by the individual members are large enough to take care of the operating expenses of the organization, plus a small surplus which is built up slowly for any emergency. We suffered greatly during the depression; so we have a little surplus now that would carry us on for a few months if some major crisis should come up; but there is no surplus intended to accumulate; just enough to keep the association going.

Mr. Merges: I think that is all.

Cross-Examination

Q. (By Mr. Mather) How long have you been president of the association?

A. Well, let's see. I was president in 1935 and, let's see: [49] in 1940 and 1941.

Q. Were you not president in 1938?

A. No, I was not president in 1938.

(Testimony of Donald C. Haas.)

Q. Are you familiar with the by-laws of the organization? A. I am, reasonably.

Q. And the matter of dues is fixed in there, is it not?

A. It is, but it can be changed by amendment to the by-laws.

Q. Has it been changed? A. It has.

Q. By minutes of the corporation?

A. Yes. It was changed—It has been changed once since the corporation was incorporated, and once before.

Q. Do you mean that the dues of the corporation were changed before the corporation was incorporated?

A. No, the dues of the association—

Q. Now, I ask you if the dues of the corporation have been changed? A. Yes.

Q. And when were they changed?

A. I believe they were changed—I think the change was completed in 1940 in November or December.

Q. In 1938, what were the dues?

A. A dollar per building per month.

Q. Per member?

A. No; a dollar per building per month. [50]

Q. Now, in 1938, who buys the supplies in the Service Committee?

A. By who buys the supplies in the Service Committee, do you mean the names of the gentlemen?

Q. Yes.

(Testimony of Donald C. Haas.)

A. I don't remember the names of the exact trustees that were on that particular committee.

Q. You had a set committee, did you not?

A. Oh, yes.

Q. And what were their duties?

A. Well, the only duties that the committee had was, if there was a demand for certain type of forms—suppose, a member wanted to put out a certain kind of form, then, it was referred to that committee, and if the committee felt that the organization should purchase that particular form, or print that particular type of form for a particular member, we did. That was the whole thing. If we decided that there would not be enough call for that type of form to bother, or going to the expense of making it, why, we didn't. That is just what that amounted to; that is exactly the duties.

Q. They performed the duties provided for in the Articles of Incorporation, did they not?

A. That was the actual duties they did.

Q. Well, did they fix the price of the merchandise that was disposed of in 1938? [51]

A. Yes, they considered the cost of the form, and they could say, "Well, we can afford to sell this for so much, figuring the printing cost."

The Court: He is not asking you what they can do; he is asking what they did in 1938.

The Witness: I was not a member of that committee; so I can't tell you that exactly.

Mr. Mather: Mr. Clerk, I would like to have this marked for identification as Respondent's Exhibit A.

(Testimony of Donald C. Haas.)

(The excess profits return for 1938 was marked for identification as Respondent's Exhibit A.)

Q. (By Mr. Mather) I hand you, Mr. Haas, what has been marked for identification as Respondent's Exhibit A, and ask you to state what that is.

A. The corporation income excess profits tax return of the Apartment Operators Association.

Q. For what year?

A. For the year 1938.

Mr. Mather: That is all.

Mr. Merges: That is all.

(Witness excused.)

Mr. Merges: I think there is nothing further, your Honor.

The Court: Has the respondent any evidence?

Mr. Mather: We will offer in evidence the income tax [52] return marked for identification as Respondent's Exhibit A.

Mr. Merges: There is no objection.

(The document heretofore marked for identification as Respondent's Exhibit A was received in evidence.)

[Respondent's Exhibit A is set out at page 83 of this printed record.]

The Court: Do you want to file briefs?

Mr. Merges: Yes.

The Court: All right. File them in accordance with the rules.

(Hearing concluded.) [53]

C PETITIONER'S EXHIBIT No. 1

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Y

DEPARTMENT OF STATE

Olympia

Article No. 86368 office of the Domestic
Secretary of State

I, Ernest N. Hutchinson, Secretary of State of
Washington, do hereby certify that

ARTICLES OF INCORPORATION
OF THE
APARTMENT OPERATORS ASSOCIATION,
OF SEATTLE

a Domestic Corporation of Seattle, Washington,
were, on the 3rd day of November A. D. 1937 at
9:55 o'clock A. M., filed for record in this office and
now remain on file herein, being duly recorded in
Book 209, at page 463-469, Domestic Corporation.

In Testimony Whereof, I have hereunto set my
hand and affixed hereto the Seal of the State of
Washington.

Done at the Capitol, at Olympia, this 9th day of
November, A. D. 1937.

ERNEST N. HUTCHINSON,

Secretary of State.

(Signed) By CHARLES B. REED

Assistant Secretary of State.

Petitioner's Exhibit No. 1—(Continued)

Articles of Incorporation
of
Apartment Operators Association
of Seattle

We, the undersigned, Arthur Vander Sys, Harry T. Williams, J. E. Wickstrom, Bert Owen and Verna Germain residents and citizens of the State of Washington, do hereby associate ourselves together for the purpose of incorporating the voluntary organization formed in 1924 and known as Apartment Operators Association, by forming a corporation under and pursuant to Chapter 134 the Law of 1907 of the State of Washington and to that end do hereby make, execute and enter into Articles of Incorporation in triplicate certifying as follows to-wit:

I.

The name of the corporation hereby formed shall be "Apartment Operators Association, of Seattle".

II.

The principal place of business shall be City of Seattle, King County, Washington.

III.

The time of existence of this corporation is and shall be fifty (50) years from the date of its incorporation.

IV.

The corporation shall have no capital stock and is limited to memberships in accordance with the provisions of its By-laws. The interest of each in-

Petitioner's Exhibit No. 1—(Continued)

corporator or member shall be equal to that of any other, and no incorporator or member can acquire any interest which will entitle him to any greater voice, vote, authority or interest in the corporation than any other member. [55]

Membership certificates may be issued under the provisions prescribed by the By-laws of the Company. Membership may be terminated by voluntary withdrawal, by expulsion and by death. Losses of membership through any such cause and the incidents thereof shall be governed by the By-laws of the Company.

V.

The objects and purposes for which this corporation are formed are as follows:

(a) To provide a mutual benefit organization not operated for profit, for the purpose of gathering and distributing facts, data, and information relative to the ownership, operation, and general conduct of apartment houses and the apartment house business in general, for the use and benefits of its members and for public dissemination.

(b) To provide a meeting place, office and other facilities which are deemed necessary or desirable in the handling of its affairs and for use and benefit of its members.

(c) To handle goods, wares and merchandise required by its members, and to render service and counsel, and assistance to its members, and generally to assist them in control of their financial and economic interests and stabilization of the industry.

Petitioner's Exhibit No. 1—(Continued)

(d) To own, operate, publish, manage and distribute any publication deemed advisable, and particularly the magazine known as the "Apartment Journal" in accordance with the law governing such publications, and in connection therewith to employ agents to conduct and handle the same sell advertising space therein and to do all things deemed necessary or expedient in connection therewith.

(e) To encourage and assist in the organization of apartment house owners and operators in the State of Washington. [56]

The Board of Trustees who shall manage the affairs of this corporation shall be composed of fifteen (15) persons who shall be members of the association in good standing, and the names of those who shall manage its affairs for two (2) months after the date of filing these Articles of Incorporation are: Arthur Vander Sys, Donald H. Yates, Harry T. Williams, J. E. Wickstrom, Bert Owen, Verna Germain, Addison Shoudy, Mrs. A. J. Clebanek, Donald C. Haas, Joseph L. Carroll, Otto Heggen, Ida E. Feather, August Anderson, R. S. Lipscomb, A. M. Hoffstater, who shall hold office until the date last aforesaid or until their successors are elected and qualify The number of Trustees of this corporation may be increased, diminished or varied to any number not less than five (5) as may be determined by majority vote of all members in good standing at a meeting called for such purpose.

Petitioner's Exhibit No. 1—(Continued)

VII.

This corporation shall have and enjoy all of the powers, rights, and privileges provided under Chapter 134 of the Laws of 1907 and of all general laws not in conflict therewith, and shall have power,

(a) To make, use and alter a corporate seal at its pleasure in such form as prescribed by the By-laws,

(b) To sue and be sued in any court of law,

(c) To purchase, own, hold, convoy and otherwise use and enjoy real and personal property of all kinds, and in connection therewith to acquire, construct and maintain, and operate buildings and equipment deemed necessary or convenient in connection therewith,

(d) To appoint subordinate agents, and officers and employ labor in connection with its affairs and to fix their compensation.

(e) To charge and collect fees, dues, assessments, service and other charges of its members and to sell or forfeit the interests of any member for [57] default in payment of the same,

(f) To make contracts, borrow money, issue notes, bills and any other evidence of indebtedness and to mortgage or otherwise encumber its property to secure the payment of same,

(g) To establish branches in any one or more cities of the State of Washington under such conditions as may be prescribed by its By-laws,

(h) To do any and all things deemed necessary or convenient to carry out its purposes as permit-

Petitioner's Exhibit No. 1—(Continued)

ted by Chapter 134 Law of 1907 and the general law not in conflict therewith,

(i) To enact and enforce By-laws for the governing of this corporation and its branches and to alter and amend same; and also to alter, amend, enlarge or diminish the purposes of this corporation,

(j) To establish, accumulate, and operate a surplus fund from any of its operations, including: Members' fees, charges and dues; and services rendered members and supplies purchased and handled for its members; and to distribute such fund to members in accordance with the provisions of its By-laws.

In Witness Whereof, we have hereunto set our hands in triplicate this 2nd day of November, 1937.

(signed) ARTHUR VANDER SYS,

(signed) HARRY T. WILLIAMS,

(signed) J. E. WICKSTROM,

(signed) BERT OWEN,

(signed) VERNA GERMAIN.

State of Washington,
County of King—ss.

On this 2nd day of November, 1937, before me, the undersigned, a Notary [58] Public in and for the State of Washington, duly commissioned and qualified, personally appeared Arthur Vander Sys, Donald H. Yates, Harry T. Williams, J. E. Wickstrom, Bert Owens Verna Germain, Addison

Petitioner's Exhibit No. 1—(Continued)

Shoudy, Mrs. A. J. Clebanek, Donald C. Haas, Joseph L. Carroll, Otto Heggen, Ida E. Feather, August Anderson, R. S. Lipscomb, A. M. Hoffstater, known to me to be the same persons mentioned in and who subscribed their names to the foregoing instrument and severally acknowledged to me that they executed the same as their free and voluntary set and deed, for the uses and purposes therein set forth.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(signed) FRANKLIN W. WHITE,

Notary Public in and for the
State of Washington, resid-
ing at Seattle. [59]

APARTMENT OPERATORS ASSOCIATION
of Seattle
(Incorporated)

By-Laws
Article I.

Section 1. The principal purpose is the incorporation under Washington State Laws of the entire voluntary organization founded in 1924 and known as Apartment Operators Association of Seattle, Washington, under authority and direction to make such incorporation ordered by vote of its members at a regular meeting thereof; admitting to membership in such corporation all members of said corporation all assets of said Association subject to all of its liabilities and obligations.

Petitioner's Exhibit No. 1—(Continued)

Section 2. This corporation hereby accepts as its own members, all members in good standing of the said un-incorporated Apartment Operators Association and also accepts as its own and asserts its ownership in and to all property and assets of said Association of every kind and character, and assumes and undertakes, in consideration thereof, all and every obligation and liability in connection therewith, all subject however, to the Articles of Incorporation and the provisions of the By-laws of this corporation.

Article II.

Section 1. The aim and objects of this corporation shall be: To promote interests of its members; their mutual protection; to promote efficiency in the conduct of their business; to eliminate unwise and unfair business practices; to protect its members against unfair or unjust taxes and legislative enactments; to endeavor to procure sound and just legal protection to the apartment industry; to advise and assist the members in the conduct in their own business; to promote [60] standards and ethical business practices; and to assist in the formation of similar associations in other cities of the State of Washington; in order that the apartment business be permanently established on a sound and economic basis. To that end, the objects and powers stated in the Articles of Incorporation are hereby confirmed and adopted as a part of these By-laws.

Petitioner's Exhibit No. 1—(Continued)

Article III.

Membership

Section 1. Any person, firm, or corporation in Seattle and King County who is the owner, lessee, or responsible operator of any building or buildings containing three (3) or more rental units designed for the occupancy of families living separately and independently of each other, and each having separate cooking quarters or facilities, shall be eligible to membership in this Association. Other memberships will be permitted as hereinafter provided. The interest of such full member shall be equal to that of any other, and no member can acquire any interest which will entitle him to any greater voice, vote, authority or interest in the Association than any other member. Only one full membership will be allowed any person, firm or corporation, irrespective of the number of buildings, owned, controlled or operated

Section 2. Associate and Branch membership may be granted under such conditions as may be provided by the Bylaws of the Association; provided however, that Associate members shall have no vote upon any matter coming before the meeting of the Association.

Section 3. Application for membership in the Association must be made in writing and filed with the Secretary on application forms approved by the Board of Trustees. Each such application shall be accompanied by the prescribed fees and not less than one months dues. [61]

Petitioner's Exhibit No. 1—(Continued)

Section 4. Membership shall be evidenced by the official dues receipt adopted by the Board of Trustees. Upon termination of membership by voluntary withdrawal, by death, or by expulsion, all interests and rights of such member in this Association shall immediately terminate and all interest of such member shall revert to the remaining members of the Association, membership being granted upon this express condition.

Section 5. Membership in the Association shall terminate upon the non-payment of dues or any other indebtedness due the Association, for a period of three (3) months from the due date thereof, provided however, that such member may be reinstated by the Board of Trustees in its discretion upon such arrears in dues or other indebtedness being paid in full, together with such penalty as the Board of Trustees may by resolution provide. Upon termination of membership as herein provided, the Executive Secretary shall thereupon notify any such member thereof by mail, and shall report such action to the next meeting of the Board of Trustees.

Section 6. Any member may be expelled for any cause deemed just, by a two-thirds vote of the Board of Trustees present at any regular meeting thereof. Such member shall be given a fair trial and impartial hearing before the Board and shall have the right to appeal to the next regular meeting of members and a majority vote of the members present at such meeting shall be final. Any expelled member may be re-instated by

Petitioner's Exhibit No. 1—(Continued)
the Board in its discretion, upon removal of the objections to membership.

Section 7. All members and officers of the original unincorporated Apartment Operators Association are declared full members of this corporation. All officers elected or appointed and placed in charge of the business and affairs of this corporation shall automatically become full members for such term of office. Election to any office of this corporation shall automatically [62] admit such officer to membership for such term of office. All subject, however, to the provisions of these By-laws.

Article IV.

Membership Dues

Section 1. Full membership dues shall be \$1.00 per month per building, regardless of the number of buildings owned, controlled or operated by any such members, such dues to be payable monthly in advance.

Section 2. Associate membership dues and requirement shall be determined by resolution of the Board of Trustees.

Section 3. Branch membership dues, conditions and requirements shall be determined by resolution of the Board of Trustees.

Article V.

Meeting of Members

Section 1. The regular meetings of members of the Association shall be held on the second Thursday of each month at such time and place as may

Petitioner's Exhibit No. 1—(Continued)

be fixed by the notice of such meeting, unless otherwise provided by the By-laws.

Section 2. Special meetings of the members may be called by the President at any time, and shall be called on request by the Board of Trustees or by the Executive Committee; or shall be called by the Secretary upon written request of any three (3) members of the Board of Trustees, or upon written request of Twenty-one (21) members in good standing. Notice of such special meeting stating time and place and the objects thereof must be mailed to each member in good standing not less than three (3) full days prior to such meeting.

Section 3. The annual meeting of members shall be held at the office of the Association or at such other time and place as determined by the Board and fixed by the notice of such meeting. Such meeting shall be held on the second Thursday in the month of January in each year for the purpose of elect- [63] ing a Board of Trustees and the officers of the Association for the ensuing year, and for the transaction of such other business as may be brought before the meeting. Written notice of the annual meeting shall be mailed by the Secretary at least ten (10) days prior to the meeting, to each member in good standing and entitled to vote, at his address as the same appears on the records of the Association. Failure to mail such notice, or any irregularity in such notice, shall not affect the validity of any annual meeting or of any proceedings at such meeting.

Petitioner's Exhibit No. 1—(Continued)

Article VI.

Quorum

A quorum at any annual, regular or special meeting of members of this Association shall consist of not less than One-Tenth ($1/10$ th) of all the members in good standing and entitled to vote.

Article VII.

Voting Power.

Section 1. No member shall have more than one (1) vote regardless of the number of buildings, owned, controlled, operated or represented by that member. No voting by proxy shall be allowed under any circumstances. A member must be in good standing in the Association in order to be entitled to vote, and in case of dispute on this point the record of the member's account with the Association shall govern, subject to review by the Board of Trustees.

Article VIII.

Government

Section 1. The business and property of the Corporation shall be managed and controlled by the Board of Trustees. There shall be Fifteen (15) Trustees each of whom shall be a full member in good standing in the Association which [64] shall be evidenced by paid up dues receipt; they shall be elected annually by ballot at the annual meeting of members and shall hold office for One (1) year, and until their successors are elected and qualify.

Petitioner's Exhibit No. 1—(Continued)

The Trustees shall set only as a Board and the individual Trustee shall have no power as such. From among such Board of Trustees, there shall be elected by ballot of members at such meeting, one as President, one as Vice-President, one as Treasurer and one as Executive Secretary, provided, however, that any two (2) or more such offices may be held by the same Trustee except the offices of President and Secretary. The Board shall fix all compensation of officers and employees.

Section 2. Place of Meeting: The Trustees may hold their meetings, have an office and keep the books of the Association (except as otherwise may be provided by law) at the office of the Association in the City of Seattle, or at such other place or places as the Board may from time to time determine.

Section 3. Regular Meetings: Regular meeting of the Board of Trustees shall be held on the Wednesday preceding the second Thursday in each month at the office of the Association or such other place or places as the Board may determine. The annual meeting of Trustees shall be held immediately after the adjournment of the annual meeting of members. No notice shall be required for any regular meeting of the Board. In case of any regular meeting date falling upon a holiday the time and place of such meeting will be set by the Executive Committee and notice will be sent to each trustee by the Secretary.

Section 4. Special Meetings: Special meetings

Petitioner's Exhibit No. 1—(Continued)

of the Board of Trustees shall be held when called by the President, or by the Executive Committee, or upon request of any three (3) members of the Board in writing addressed to the Secretary. [65]

The Secretary shall give notice of each special meeting by mailing, telephone or telegraphing the same at least Twenty-four hours before the meeting to each Trustee, but such notice may be waived by the Trustees. At any meeting at which every Trustee shall be present, even though without notice, any business may be transacted, and attendance at any such meeting by any Trustee, shall constitute a waiver of notice.

Section 5. Quorum: A majority of the Board of Trustees for the time being in office shall constitute a quorum for the transaction of business, but if at any meeting of the Board there be less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum shall be present.

Section 6. Executive Committee: The Executive Committee shall be composed of the stated officers of the Association and the two immediate past presidents of the Association. The President shall be the Chairman and the Executive Secretary shall be the Secretary thereof. During the intervals between the meetings of the Board of Trustees, in emergency, the Executive Committee shall possess and may exercise all the powers of the Board of Trustees in the management and direction of the affairs of the Association in all

Petitioner's Exhibit No. 1—(Continued)

cases in which specific directions shall not have been given by the Board of Trustees. All action by the Executive Committee shall be reported to the Board of Trustees at its next meeting succeeding such action, and shall be subject to revision and authorization by the Board; provided, that no right of third parties shall be affected by any such revision or authorization. Regular minutes of the proceedings of the Executive Committee shall be kept by the Secretary in a separate book provided for that purpose. Vacancies in the Executive Committee shall be filled by the Board of Trustees. A majority of the Committee with the Secretary shall be necessary to constitute a quorum, and in every case [66] the affirmative vote of a majority of the members shall be necessary for the passage of any resolution. The Executive Committee may act by written resolution of a quorum thereof, attested by the Secretary although not formally convened; it shall fix its own rules of procedure and shall meet as provided by such rules, or by resolution of the Board, and it shall also meet at the call of its Chairman or of any member of the Committee.

Section 7. All matters affecting the welfare of the Association shall be presented to the Board of Trustees for consideration and determination, after which they will be reported to a regular meeting of members of the Association.

Section 8. In the event that the Board of Trustees shall fail to function, any matter may be

Petitioner's Exhibit No. 1—(Continued)

brought before the Association at any regular meeting of members, or at a special meeting of members duly called for such purpose, and the action taken on such matter at any such meeting of members by two-thirds majority shall be final, except as otherwise provided by the By-laws.

Section 9. The actual conduct of the affairs of the Association shall be vested in its officers subject to control at all times by the Board of Trustees and its Executive Committee.

Section 10. Any member having a grievance against the Association or any officer or member of the Association, shall present the same to the Board of Trustees in writing through the Secretary, or in person, before bringing such matter before any meeting of the members of the Association. Should the Board of Trustees fail to act upon such grievance, then the complaining member may present such grievance before a regular meeting of members and a majority vote of a quorum of members present at such meeting shall decide the issue.

Section 11. No other than members of the Association, or its invited guests, shall have the right of the floor without the unanimous consent of the members present at any regular meeting of the Association. [67]

Section 12. The Board of Trustees may delegate from time to time to suitable committees any duties that are required to be executed during the intervals between the meetings of the Board, and such committees shall report to the Board of Trustees when and as required.

Petitioner's Exhibit No. 1—(Continued)

Article IX.

Officers.

Section 1. The officers of this Association shall be; a President, Vice President, Treasurer, Executive Secretary, and such other officers as shall from time to time be provided for by resolution of the Board of Trustees. A person not a Trustee shall not be eligible to hold the office of President, Vice-President, Treasurer or Secretary. All other officers may be chosen either from within or without the Board of Trustees. Such other officers shall be elected at the first meeting of the Board of Trustees after the annual election of Trustees by the members; and shall hold office for one (1) year and until their respective successors shall have been duly elected.

Article X.

Election of Trustees and Officers.

Section 1. Nomination of members as candidates for election as Trustees and officers of the Association shall be made at the regular meeting of the Association held in December of each year.

Section 2. Member candidates nominated shall be voted upon by ballot of the members present at the regular annual meeting held in January of each year.

Section 3. The candidate receiving the highest number of votes for the respective offices for which they were nominated shall be duly elected and shall qualify by being in good standing on the

Petitioner's Exhibit No. 1—(Continued)

books of the Association, and taking the oath of office. [68]

Section 4. Any member of the Association in good standing shall be eligible for nomination and election as a Trustee or officer of the Association.

Section 5. A nominating committee consisting of five members shall be appointed from those present at the regular November meeting in each year, to make recommendations for member nominations at the December meeting of the same year. The committee's recommendations shall be placed before the regular December meeting for the guidance of the members, but shall not restrict the right of members to make additional nominations as they see fit.

Article XI.

Vacancies

Section 1. A vacancy in any elective office shall be filled by a majority vote of the Board of Trustees at any regular meeting; the Trustee or officer so elected to hold office during the unexpired term of the vacancy so filled.

Section 2. The absence of any Trustee or officer from Three (3) consecutive regular monthly meetings of the Board of Trustees shall constitute a vacancy, unless such absence has been sanctioned by the Board, or inability to attend has been reported to the Secretary.

Section 3. Any Trustee or officer may be removed for cause deemed just by two-thirds vote of the Board at any regular, or special meeting called

Petitioner's Exhibit No. 1—(Continued)

for that purpose, or by two-thirds vote of the members at any regular meeting thereof.

Article XII.

Powers and Duties of Officers

Section 1. President: The President shall preside at all meetings of members of the Association and of the Board of Trustees and shall have [69] general supervision over the business and affairs of the Association. He shall appoint all standing committees and such special committees as may be necessary from time to time. He shall fill any vacancies occurring in such committees. He shall sign with the Secretary all official documents authorized by the Board of Trustees of the Association and shall counter sign all checks issued by the Treasurer drawn against Association funds in payment of bills authorized by the Board of Trustees and approved by the Auditing Committee. He shall from time to time make such reports of the affairs of the Company as the Board of Trustees may require and shall annually present a report of the preceding years business to the annual meeting of members. He shall do and perform such other duties as may be from time to time assigned to him by the Board of Trustees.

Section 2. Vice-President: The Vice-President shall possess the power and shall perform the duties of President in his absence or disability. He shall do and perform such other duties as may from time to time be assigned to him by the Board of Trustees.

Petitioner's Exhibit No. 1—(Continued)

Section 3. Executive Secretary: The Executive Secretary shall keep the minutes of all meetings of the Board of Trustees and the minutes of all meetings of its Executive Committee and the minutes of all meetings of the members. He shall attend to giving and serving of all notices of the Association. He shall sign with the President in the name of the Company all contracts and other documents authorized by the Board of Trustees, and when so ordered by the Board of Trustees he shall affix the seal of the Association thereto. He shall sign or attest all receipts for membership fees, dues and other charges and shall keep a record of members showing their current monthly standing. He shall have charge of the Association seal and of the minute book and of such other books and papers as the Board of Trustees may direct. He shall in general perform all the duties incident to the office of Secretary, subject [70] to the control of the Board of Trustees, and shall be charged with the actual management and conduct of the office of the Association and of the services rendered to members. He shall do and perform such other duties as may from time to time be assigned to him by the Board of Trustees.

Section 4. Treasurer: The Treasurer shall have the custody of all funds and securities of the Association which may come into his hands; he shall be custodian of all the property and assets of the corporation subject to the control and order of the Board of Trustees; when necessary or proper

Petitioner's Exhibit No. 1—(Continued)

he may endorse on behalf of the Association for collection checks, notes, and other obligations and shall deposit the same to the credit of the Association in such bank or banks or depositary as the Board of Trustees may designate. He shall sign with the President all checks against the Association funds drawn in payment of bills authorized by the Board of Trustees and approved by the Auditing Committee. He shall receive all monies due the Association and issue official receipts therefore. He shall make a monthly report of receipts and expenditures and shall prepare a semi-annual statement of all receipts and disbursements on January 1st and July 1st of each year. He shall perform all acts usually incident to the position of Treasurer, and shall perform such other duties as may from time to time be assigned to him by the Board of Trustees, and shall give a bond as required by the Board of Trustees.

Section 5. Committees: When so directed by the Board, Standing Committees shall be appointed by the President to serve for the same length of time as the regularly elected officers and shall be as follows: [71]

(a) Legislative Committee: This committee shall consist of three (3) members, whose duty it shall be to keep in touch with the legislative bodies of the City, County and State in order that the best interests of the members and the apartment industry be properly protected. All matters pertaining to legislative functions, coming be-

Petitioner's Exhibit No. 1—(Continued)

fore meetings of the Association, shall be referred to this Committee before action is taken, and the Committee shall report to the Board of Trustees the results of its deliberations, and such reports shall be acted upon immediately.

(b) Membership Committee: This Committee shall consist of three (3) members whose duty it shall be to investigate all applications for membership in the Association that may be placed in its hands by the Secretary and report their findings to the regular meeting of the Association. This Committee shall devise ways and means of increasing the membership of the Association and present all such proposals to the Board of Trustees.

(c) Ethics and Grievance Committee: This Committee shall consist of three (3) members whose duty it shall be to propose standard of ethics and of business practices as a guide for the members and the business of the Association in general. This committee shall also act as an intermediary in all matters of dispute between the members, or between the members and the Association, and all such matter shall be referred to it for its recommendation.

(d) Program and Publicity Committee: This committee shall consist of three (3) members whose duty it shall be to arrange programs for the monthly meetings of the Association which will be of maximum interest and benefit to the members, and to secure publicity for the Association and its work in behalf of the apartment industry. This com-

Petitioner's Exhibit No. 1—(Continued)

mittee shall have general supervision over all publications, circulars and forms issued by the Association.

(e) Rental Committee: This Committee shall consist of three (3) members whose duty it shall be to keep in touch with the rental situation so that the [72] members may be kept advised of the true condition as to vacancies, rentals, the trend of supply and demand and all such information as may be of value to the Association in rendering accurate service to its members.

(f) Ways and Means Committee: The President shall appoint a Committee of five (5) members either within or without the Board of Trustees as a ways and means committee. Such committee shall have and exercise all the provisions and powers usually exercised by such a committee and not inconsistent with powers conferred by these By-laws.

(g) Auditing Committee: A committee of three (3) members of the Board shall be designated by the President at each regular meeting to audit the current accounts presented at such monthly meeting before the same are approved and paid. The President shall also appoint an auditing committee of three (3) members of the Board who shall audit and verify the accounts of the Secretary and Treasurer for the purposes of the semi-annual report of such officers required to be made January 1st and July 1st of each year.

(h) Supplies and Services Committee: This

Petitioner's Exhibit No. 1—(Continued)

committee shall consist of three (3) members, either within or without the Board of Trustees, to supervise supplies furnished or services rendered to members, and to fix the price thereof, subject to the approval of the Board.

(i) The President and the Executive Secretary shall be ex-officio members of all committees appointed or created when not specifically named therein.

Article XIII.

Official Publication

Section 1. The official publication of this Association is and shall be "Apartment Journal" which is hereby accepted, taken, and declared to be owned, operated and published by this Association and distributed [73] to the members in good standing from time to time and no member can obtain any equity, interest or right therein extending beyond his membership as provided in these By-laws.

Section 2. This publication shall be controlled and managed by the Board of Trustees of this Association under the direct management of the Executive Secretary, titled Managing Editor, assisted by such associate editors as may be from time to time appointed by the President and approved by the Board of Trustees.

Section 3. The Managing Editor with the approval of the President is authorized to employ all additional labor and incur all additional expense incident to publications, mailing and delivery to

Petitioner's Exhibit No. 1—(Continued)

each member monthly a copy of such publications, all subject to the approval of the Board of Trustees.

Article XIV.

Rules of Order

Section 1. Robert's Rules of Order shall govern all meetings of the Association in all cases where they are applicable and in which they do not conflict with the By-laws of the Association.

Section 2. Order of Business: The order of business at any regular or special meetings of members or of the Board of Trustees of the Association shall be as follows:

1. Call meeting to order.
2. Roll call
3. Reading of minutes
4. Communications
5. Reports of officers
6. Reports of standing committees
7. Reports of special committees
8. Unfinished business
9. New business
10. Good of the Association
11. Adjournment [74]

Article XV.

Supplies and Services

Section 1. The Board of Trustees shall have power to authorize the purchase and to otherwise acquire any and all kinds of supplies, goods, wares, and merchandise used or useful by its members in

Petitioner's Exhibit No. 1—(Continued)
connection with their business, consolidating such purchases in their discretion in quantity purchases, in harmony with members' requirements, or orders and withdrawals therefrom, for the purpose of obtaining wholesale prices and reductions; and to dispose of, handle, transport, store, warehouse, sell and deliver same to the members of this Association as required by them; and to fix the price thereof and charge and collect of such member such cost of same plus a service charge or fee for so handling the same; and to set aside any profits derived therefrom in a surplus fund to be established by resolution of the Board of Trustees.

Section 2. The Association will employ and furnish to its members the services of individuals for apartment shopping, and any other service for which there is deemed a general or pressing demand, at the actual cost of such service plus a service charge therefor to be fixed by resolution of the Board of Trustees. All monies received shall be deposited to the credit of the Association in such bank or other depository designated by the Board.

Section 3. Payments shall be made by checks, or check vouchers, all of which shall be signed by the officer or officers of the company as provided by the By-laws and in the absence of such By-laws the Board of Trustees shall by resolution direct what officers are authorized to sign and countersign checks or vouchers. Bills receivable, drafts and other evidence of indebtedness to the company

Petitioner's Exhibit No. 1—(Continued)

shall be endorsed for the purpose of discount or collection by the Treasurer, or such other officer or officers of the company as the Board of [75] Trustees shall from time to time by resolution designate. No bills or notes shall be executed by or on behalf of the company unless the Board of Trustees of the company shall expressly authorize the same.

Article XVI.
Surplus Fund

Section 1. The Board of Trustees shall by resolution establish a surplus fund in a bank or other depository of its selection and may change such depository at its discretion. Into this fund shall be paid and deposited all monies and monetary profits received from fees, dues, service charges, journal advertising and from any other source or sources which are not deemed necessary to retain in the commercial banking account of the Association to meet the operating expenses thereof and for working capital. Such surplus fund shall be jointly owned by all of the members of the Association as such in good standing, but such funds shall be subject to the exclusive control, use, disposal and disbursement by the Board of Trustees.

Section 2. In its discretion, the Board of Trustees may use this fund or any part thereof to acquire and establish an office, meeting place, and other facilities for the handling of the business of the Association, and otherwise for the use and

Petitioner's Exhibit No. 1—(Continued)

benefits of its members, and may distribute such fund, or any part thereof, pro-rata to the members of the Association in good standing, contributing to the source of such fund through the purchase of supplies handled or contracted for by the Association.

Article XVII.

Labor Relations

Section 1. Labor Relations Committee: For the purpose of dealing with labor unions and settling labor disputes between the members and their employees, there is hereby created a Labor Relations Committee to be composed of three (3) [76] members elected by the Board of Trustees. Such committee shall meet with the Committee of labor unions for the purpose of arriving at agreements covering uniform practices and standards of hours and wages applicable to the different types of buildings and employment in the apartment industry. Such committee shall also hear all disputes and complaints arising at any time or from time to time between any member and employee. Any and all negotiations and agreement by such committee with any labor union shall be referred to the Board of Trustees and approved by a majority of the members at any meeting, before the same shall become binding on this Association and its members.

Section 2. Labor Representative: The Executive Secretary of this Association shall be and is hereby made the Labor Representative of this Association for its members and shall have and exercise

Petitioner's Exhibit No. 1—(Continued)

all of the functions as such, subject to control by the Labor Relations Committee and the approval of the Board of Trustees.

Article XVIII.

Seal

Section 1. The seal of this corporation shall be circular in form, containing in the circle the words "Apartment Operators Association", and inside the circle the words and figures "Established 1924 Seattle".

Section 2. This seal may be altered or amended or changed at any time or from time to time by resolution of the Board of Trustees.

Article XIX.

Amendments

Section 1. These By-laws may be amended by filing with the Secretary of the Association a copy of the proposed amendment signed by not less than one-tenth (1/10) of the members in good standing, which shall be acted upon [77] by the Board of Trustees at its next regular meeting and referred to the following regular meeting of members of the Association for determination. Upon vote of Two-thirds (2/3) of the members present at such regular meeting, such amendments shall be declared passed the first reading and shall be referred to the next regular meeting of members for final decision and upon receiving a Two-thirds (2/3) vote of all members at such meeting, such amendments shall be adopted.

Petitioner's Exhibit No. 1—(Continued)

Section 2. These By-laws may also be altered or amended by unanimous vote of the Board of Trustees. Such alteration or amendments to be reported to the next succeeding regular meeting of members for approval.

Article XX.

These By-laws and all amendments thereof shall be firmly bound or entered in a special book which shall be provided for such purpose and shall be in custody of the Secretary, and shall be open to the members at all times during business hours.

[Endorsed]: Filed Sep. 8, 1941. [78]

PETITIONER'S EXHIBIT No. 2

[79]

APARTMENT OPERATOR'S ASSOCIATION
REPORT ON AUDIT
DECEMBER 31, 1938

[80]

E. J. MINER
Certified Public Accountant
Central Building
Seattle, Washington

May 8, 1939.

Apartment Operators Association
Seattle, Washington
Gentlemen:

We have completed an audit of your records for the year ended December 31, 1938 and present herewith our report.

We have prepared and submit as part of this report a statement of Cash Receipts and Disbursements for the year ended December 31, 1938.

We audited the cash transactions in detail throughout the year. Bank statements with paid checks, duplicate receipts and vouchers for all disbursements were presented for our inspection. We found these records to be in order. All disbursements have been properly approved by the finance committee.

During November and December of 1937 and in January 1938 one of your salesmen, Mr. A. J. Besette, made collections for advertising space in your Journal and failed to turn in the funds to your office. Commissions accruing to Mr. Besette have been applied to the amount of this defalcation and at this date there is a balance remaining of \$85.57. Commissions on future collections are expected to be sufficient to balance the above amount

We have made recommendations to your Secretary-Treasurer for changes in the bookkeeping system which we believe will improve your records. We opened a new general ledger and assisted your bookkeeper to balance the accounts for 1939 to date. We will also supervise the work until your bookkeeper is thoroughly familiar with the changes.

Respectfully submitted,

E. J. MINER,

Certified Public Accountant,
(Member, American Institute of Accountants.) [81]

EXHIBIT 1

APARTMENT OPERATOR'S ASSOCIATION
CASH RECEIPTS AND DISBURSEMENTS
YEAR ENDED DECEMBER 31, 1938

Cash Balance, January 1, 1938.....		\$ 1,209.06
Cash Receipts:		
Membership Dues	\$ 6,943.00	
Journal Advertising	2,519.09	
Cash Sales of Supplies.....	733.33	✓ Sales
Collection on Supply Accounts Receivable	618.75	10,814.17
		<hr/>
		\$12,023.23
Cash Disbursed—Exhibit 2.....		10,457.82
		<hr/>
Cash on Hand and in Bank, December 31, 1938		\$ 1,565.41
		<hr/>
	(Pencil Notation)	1,209.06
		<hr/>
	(Pencil Notation)	356.35

Note: There was also Cash in Bank in the amount of \$241.00 representing Legislative Fund Assessments collected. During January 1939 a separate bank account was opened for this fund.

[82]

EXHIBIT 2

APARTMENT OPERATOR'S ASSOCIATION
CASH DISBURSED
YEAR ENDED DECEMBER 31, 1938

Rent	\$ 660.00
Telephone and Telegraph.....	413.58
Equipment Purchased	584.74
Office Supplies	48.29
Mailing Cards and Postage.....	162.79
Printing Journal	1,374.20

Mailing Journal	202.60
Stationery and Printing.....	291.70
Repairs	24.02
Towel Service	18.00
Traveling	10.00
Journal of Commerce.....	15.00
Bond Premiums	12.50
Western Conference Attendance	135.45
Salaries and Commissions.....	5,298.26
Taxes and Licenses.....	106.58
Purchase of Supplies for Resale.....	977.07—Purch
Shopping Service	17.50
General Expenses	105.54
	<hr/>
	\$10,457.82
	<hr/> <hr/>

[83]

APARTMENT OPERATOR'S ASSOCIATION
DEPARTMENTAL OPERATIONS
DECEMBER 31, 1938

	Income	Expense	Profit or (Loss)
Association :			
Dues	\$6,943.00		
General Expense		\$5,074.34	\$1,868.66
	<hr/>	<hr/>	
Journal :			
Advertising	\$2,519.09		
Mailing	\$ 202.60		
Printing	1,374.20		
General	1,841.62	3,418.42	(899.33)
	<hr/>	<hr/>	
Supply Merchandise			
Sales	\$1,352.08		
Purchases	\$ 977.07		
General	987.99	1,965.06	(612.98)
	<hr/>	<hr/>	
Net Income per Books			<hr/> \$ 356.35 <hr/> <hr/>

[84]

APARTMENT OPERATOR'S ASSOCIATION
GENERAL EXPENSE
ALLOCATED TO DEPARTMENTS

Equipment	\$ 584.74
Office Supplies and Postage.....	211.08
Rent	660.00
Salaries	5,298.26
Stationery and Printing.....	291.70
Taxes	106.58
Telephone	413.58
General Expenses	338.01

Total Expenses	\$7,903.95
----------------------	------------

Distributed on Basis of Total Income:

	Income	Percentage	Expense
Association	\$ 6,943.00	64.20%	\$5,074.34
Journal	2,519.09	23.30	1,841.62
Supply Department	1,352.08	12.50	987.99
	<u>\$10,814.17</u>	<u>100.00%</u>	<u>\$7,903.95</u>

[Endorsed]: Filed Sept. 8, 1941.

[85]

1938

UNITED STATES

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN 1938

FOR CORPORATIONS HAVING TOTAL RECEIPTS OF NET MORE THAN \$250,000 AND A NET INCOME OF NOT MORE THAN \$25,000 OR NO NET INCOME (EXCEPT CAPITAL GAINS AND LOSSES) IN 1973

(continued)

For Calendar Year 1938

or Fiscal Year beginning

. 1938, and ended

PRINT PLAINLY CORPORATION'S NAME AND ADDRESS

2

1

1-1-23

16-1063-16

ADJUSTED NET INCOME COMPUTATION

GROSS INCOME

- | Less returns
and allowances | | 9 | |
|---|---|---|--|
| 1. Order sales (when inventories are
an income-determining factor)..... | 8 | | |
| 2. Less cost of goods sold (from Schedule B-1)..... | | | |
| 3. Gross profit from sales (from 1 minus 2)..... | | | |
| 4. Less receipts (when inventories are not an income-determining factor)..... | 8 | | |
| 5. Less cost of operations (from Schedule B-2)..... | | | |
| 6. Gross profit where inventories are not an income-determining factor (from 3 minus 4)..... | | | |
| 7. Interest on bank overdrafts, mortgages, bonds, bank deposits, etc. (See Instruction 14-1)..... | | | |
| 8. Interest on obligations of the United States (from Schedule A, line 18 (c)). (See Instruction 14-2)..... | | | |
| 9. Divs. (See Instruction 16-1)..... | | | |
| 10. Royalties. (See Instruction 16-2)..... | | | |
| 11. (a) Capital gains (or losses) (from Schedule C). (11 (a) and loss, do not enter over \$5,000)
(b) Divs. and loss from sale of exchange of property other than capital assets (from Schedule D)
(c) Divs. (from Schedule 5)..... | | | |
| 12. Other income (include interest)..... | | | |
| 13. Total income (add lines 3, 6, 7, 8, 9, 10, 11, 12, and 13)..... | | | |

STATEMENT OF POSITION

14.	Total income in Items 2, and 8 to 13, inclusive	
15.	Computation of excess (from Schedule P)	
16.	Subtotal and total (and detached schedule)	
17.	Taxes (See Instructions, item 24)	
18.	Net income (from line 16)	
19.	Net taxable income (from line 18)	
20.	Interest (See Instructions, 26)	
21.	Income (See Instructions 26)	
22.	Income (See Instructions 26)	
23.	Income (See Instructions 26)	
24.	Income (See Instructions 26)	
25.	Income (See Instructions 26)	
26.	Income (See Instructions 26)	
27.	Income (See Instructions 26)	
28.	Income (See Instructions 26)	
29.	Income (See Instructions 26)	
30.	Income (See Instructions 26)	
31.	Income (See Instructions 26)	
32.	Income (See Instructions 26)	
33.	Income (See Instructions 26)	
34.	Income (See Instructions 26)	
35.	Income (See Instructions 26)	
36.	Income (See Instructions 26)	
37.	Income (See Instructions 26)	
38.	Income (See Instructions 26)	
39.	Income (See Instructions 26)	
40.	Income (See Instructions 26)	
41.	Income (See Instructions 26)	
42.	Income (See Instructions 26)	
43.	Income (See Instructions 26)	
44.	Income (See Instructions 26)	
45.	Income (See Instructions 26)	
46.	Income (See Instructions 26)	
47.	Income (See Instructions 26)	
48.	Income (See Instructions 26)	
49.	Income (See Instructions 26)	
50.	Income (See Instructions 26)	
51.	Income (See Instructions 26)	
52.	Income (See Instructions 26)	
53.	Income (See Instructions 26)	
54.	Income (See Instructions 26)	
55.	Income (See Instructions 26)	
56.	Income (See Instructions 26)	
57.	Income (See Instructions 26)	
58.	Income (See Instructions 26)	
59.	Income (See Instructions 26)	
60.	Income (See Instructions 26)	
61.	Income (See Instructions 26)	
62.	Income (See Instructions 26)	
63.	Income (See Instructions 26)	
64.	Income (See Instructions 26)	
65.	Income (See Instructions 26)	
66.	Income (See Instructions 26)	
67.	Income (See Instructions 26)	
68.	Income (See Instructions 26)	
69.	Income (See Instructions 26)	
70.	Income (See Instructions 26)	
71.	Income (See Instructions 26)	
72.	Income (See Instructions 26)	
73.	Income (See Instructions 26)	
74.	Income (See Instructions 26)	
75.	Income (See Instructions 26)	
76.	Income (See Instructions 26)	
77.	Income (See Instructions 26)	
78.	Income (See Instructions 26)	
79.	Income (See Instructions 26)	
80.	Income (See Instructions 26)	
81.	Income (See Instructions 26)	
82.	Income (See Instructions 26)	
83.	Income (See Instructions 26)	
84.	Income (See Instructions 26)	
85.	Income (See Instructions 26)	
86.	Income (See Instructions 26)	
87.	Income (See Instructions 26)	
88.	Income (See Instructions 26)	
89.	Income (See Instructions 26)	
90.	Income (See Instructions 26)	
91.	Income (See Instructions 26)	
92.	Income (See Instructions 26)	
93.	Income (See Instructions 26)	
94.	Income (See Instructions 26)	
95.	Income (See Instructions 26)	
96.	Income (See Instructions 26)	
97.	Income (See Instructions 26)	
98.	Income (See Instructions 26)	
99.	Income (See Instructions 26)	
100.	Income (See Instructions 26)	

EXCESS-PROFITS TAX COMPTONATION.

- | | 1 | 2 |
|--|---|---|
| 23. Net capital for common-poolers tax computations (line 20, above). | | |
| 24. Value of capital stock in the United States in your capital stock tax return for the year ended July 31, 1937, less the amount of capital stock in the United States in your income tax return for the year ended on or before July 31, 1937. (1937) | | |
| 25. 40 per cent of line 24 | | |
| 26. Dividends received directly (40 percent of net, 2, Schedule E, but not in excess of 80 percent of line 25, above) | | |
| 27. Balance subject to common-poolers tax (line 20 minus total of lines 25, 26, and 27, above) | | |
| 28. Amount taxable at 6 percent (0 percent of line 24, but not more than 20 percent of line 27) | | |
| 29. Balance taxable at 12 percent (27 minus line 28, 21, and tax, 28) | | |
| 30. Total common-poolers tax (total of lines 28, 29, and 31, above) | | |

INCOME TAX COMPUTATION

COMPARATIONS WITH NET INCOME OF FIFTY MORE THAN FIFTY. C. Indication in

- [illegible]

THE UNIVERSITY OF CHICAGO

[Printer's Note—Respondent's Exhibit A continued containing Schedules A to E, inclusive. A printed form not filled in.]

Schedule F.—COMPENSATION OF OFFICERS. (See instruction 22)

[illegible]

Total Compensation of Officers. (Enter as item 16, page 1)

Note—Schedule B-1 (IN DUPLICATE) also must be filed with this return if compensation in excess of \$75,000 was paid to any officer or employee.

Schedule G.—BAD DEBTS. (See instruction 25) (See note 1)

1. Fumble Year	2. Not Income Reported	3. Sales on Account	4. Real Estate Charged Off by Corporation & No Reserve is Carried on Books. (See note 5)	If Corporation Carries a Reserve—	
				5. Gross Amount Added to Reserve	6. Amount Charged Against Reserve
1934	\$	\$	\$	\$	\$
1935					
1936					
1937					
1938 (See note 8)					

1. Check whether deduction claimed represents worthless debts charged off ☐, or is an addition to a reserve ☐

2. In addition to the data required above, corporations claiming deductions on other than a reserve basis must submit the information specified in Instruction 25.

2. Not including securities which are capital assets ascertained to be worthless and charged off within the taxable year, which should be reported in Schedule C.

Schedule H—TAXES. (See instruction 27)

Schedule I.—CONTRIBUTIONS OR GIFTS PAID. (See instruction 34)

Name	Amount	Name and Address of Organization	Amount
	\$		\$
	/		
Total. (Enter as item 22, page 1).	\$	Total. (Enter as item 22, page 1, subject to 5 percent limitation). (See instruction 260.)	\$

Schedule J.—DEPRECIATION. (See Instruction 20)

[illegible]

Schedule K—OTHER DEDUCTIONS. (See instructions 20)

Schedule L—DISTRIBUTIONS TO STOCKHOLDERS

Distribution Out of Earnings or Profits of the Taxable Year or Out of Earnings or Profits Accumulated Since February 28, 1913
 (Indicate Date Paid)

Distributions Out of Earnings or Profits of the Taxable Year or Out of Earnings or Profits Accumulated Since February 28, 1913 (Indicate dates paid)		1. Taxable Distributions		2. Nontaxable Distributions	
1. Cash.....		\$			
2. Assets other than cash or the corporation's own securities: (See notes 1 and 5.) (Indicate nature of assets).....		\$			
3. Treasury stock. (See notes 1 and 6).....		\$			
4. Obligations of the corporation (bonds, notes, accept, etc.). (See notes 3 and 6).....		\$			
5. Common stock of the corporation distributed to holders of common stock. (See notes 3 and 6).....		\$			
6. Preferred stock of the corporation distributed to holders of common stock. (See notes 2, 4, and 6).....		\$			
7. Common stock of the corporation distributed to holders of preferred stock. (See notes 2, 4, and 6).....		\$			
8. Preferred stock of the corporation distributed to holders of preferred stock. (See notes 2, 4, and 6).....		\$			
9. Options—Medium of payment elected by shareholders:					
(a) Cash.....					
(b) Common stock. (See notes 3 and 6).....					
(c) Other. (See note 5.) (Specify nature).....					
10. Totals of Items 1 to 9.....		\$		\$	

1. Enter the lesser of the two following amounts determined as of time of distribution: (a) The adjusted basis in the hands of the corporation as provided in section 112 of the Revenue Act of 1926, or (b) the fair market value.

2. Enter the amount of the job market value at time of distribution.

2. Enter the bases of the two following amounts determined as of the time of distribution: (a) Face value; or (b) fair market value.

4. Preferred stock for this purpose should be considered as stock which is preferred as to either dividends or assets, irrespective of formal designation.

5. Distributions in the form of rights to purchase securities or securities or other obligations of the corporation should be entered in the time available to the security holders, or other obligations for which rights were distributed.

APARTMENT OPERATORS ASSOCIATION

DEPARTMENTAL OPERATIONS

	Income	Expense	Profit or (Loss)
Association			
Association Dues	\$6,943.00		
Mailing Cards and			
Postage	\$ 162.79		
Travel	10.00		
Western Conference			
Attendance	135.45		
General Expenses	3,333.72	\$3,641.96	\$3,301.04
<hr/>			
Journal			
Advertising	\$2,519.09		
Printing	\$1,374.20		
Mailing	202.60		
Commission and			
Salaries	1,818.26		
General Expense	1,209.90	\$4,604.96	(\$2,085.87)
<hr/>			
Supply Merchandise			
Sales	\$1,352.08		
Purchases	\$ 977.07		
General Expenses	649.09	\$1,626.16	(274.08)
<hr/>			
Net income year ended December 31, 1938			
(Entirely from dues).....		\$	941.09
		<hr/> <hr/>	
		[90]	

APARTMENT OPERATORS ASSOCIATION

GENERAL EXPENSES

TO BE ALLOCATED TO DEPARTMENTS

Rent	\$ 660.00
Telephone and Telegraph.....	413.58
Office Supplies	48.29
Stationery and Printing.....	291.70
Repairs	24.02
Towel Service	18.00

General Expenses (Continued)

Journal of Commerce.....	15.00
Bond Premium	12.00
Salaries and Commissions.....	3,480.00
Taxes and Licenses.....	106.58
Shop Service	17.50
General Expense	105.54
	<hr/>
	<u>\$5,192.71</u>

Distributed on Basis of Total Income:

Association	\$3,333.72
Journal	1,209.90
Supply Department	649.09
	<hr/>
	<u>\$5,192.71</u>

[91]

APARTMENT OPERATORS ASSOCIATION

BALANCE SHEET

December 31, 1938

ASSETS

Cash on Hand	\$ 10.73
Cash in Bank.....	1,795.68
	<hr/>
Total Assets.....	<u>\$1,806.41</u>

LIABILITIES

Surplus

Legislative Surplus	\$ 241.00
General Surplus	1,565.41
	<hr/>
Total Surplus.....	<u>\$1,806.41</u>

[92]

AFFIDAVIT

State of Washington,
County of King—ss.

The undersigned, Harry T. Williams, being first duly sworn on oath deposes and says: That he is the Executive Secretary and Treasurer of Apartment Operators Association (incorporated) of Seattle, Washington, and makes this affidavit for and on its behalf and for no other purpose; that heretofore this affiant has verified and filed with the Collector of Revenue claim of exemption under the Income Tax Laws of the United States; that proof of exemption as specified in Article 101-1 consisting of an affidavit attached to (a) copy of Articles of Incorporation, (b) copy of By-laws of organization, (c) latest financial statement, (d) statement showing the character of the organization, the purposes for which it was organized, its actual activities, the sources of its income and disposition and a showing that none of its income or surplus may inure to the benefit of any member of the Association.

Affiant further states that Apartment Operators Association is a business league composed solely of bona fide owners and operators of apartment houses in the City of Seattle, King County, State of Washington, who have heretofore associated themselves together as a business league in 1924 and that said organization was duly exempted by the Commissioner of Internal Revenue; that in December 1937, said organization incorporated itself under the non-

profit law of the State of Washington being a special act of 1907 entitled "Corporations Not Formed For Profit" Section 3888 and succeeding paragraphs Remington's Revised Statutes; that Section 11 of said Laws of 1907 provides that if such corporations shall engage in any business, trade, etc., for gain, it shall forfeit its rights to exist as a corporation; that Apartment Operators Association never has and does not now operate for gain or profit and is solely an association of persons having common business interest who have associated themselves together for the purpose of promoting such common interest and the improvement of business conditions in the apartment industry, disseminating information among the members and to act as a common purchasing agent for materials and supplies as and when required by the members, and to prepare and make printed forms desirable or useful in connection with the business of the members.

Affiant further states that this association has no capital stock and further affiant saith not.

Dated this 28th day of September 1939 at Seattle, Washington.

HARRY T. WILLIAMS

Harry T. Williams

Subscribed and sworn to before me this 28th day of September, 1939.

R. C. LONG

Notary Public in and for the State of Washington,
residing at Seattle. [93]

[Title of Board and Cause.]

FINDINGS OF FACT AND OPINION

Docket No. 106666

Promulgated January 29, 1942

Exemption as a business league is denied a non-profit corporation which buys supplies for its members and sells them to the members at a price which includes a service charge or fee which is placed in a fund which under its bylaws may be distributed among the members.

Edward E. Merges, Esq., for the petitioner.

T. M. Mather, Esq., for the respondent.

The Commissioner, holding that the petitioner was not exempt from tax, determined deficiencies for 1938 of \$107.49 income tax and \$103.19 excess profits tax.

FINDINGS OF FACT

The petitioner is a corporation, with principal office at Seattle, Washington. It filed its return in Tacoma. It was organized November 3, 1937, under the laws of the State of Washington relating to non-profit corporations. It is limited to memberships and has no capital stock. It pays no dividends.

The objects and purposes for which it was formed are stated in its articles of incorporation as follows:

(a) To provide a mutual benefit organization not operated for profit, for the purpose of gathering and distributing facts, data, and information relative to the ownership, operation, and general con-

duct of apartment houses and the apartment house business in general, for the use and benefits of its members and for public dissemination.

(b) To provide a meeting place, office and other facilities which are deemed necessary or desirable in the handling of its affairs and for use and benefit of its members.

(c) To handle goods, wares and merchandise required by its members, and to render service and counsel, and assistance to its members, and generally to assist them in control of their financial and economic interests and stabilization of the industry.

(b) To own, operate, publish, manage and distribute any publication deemed advisable, and particularly the magazine known as the "Apartment Journal" in [94] accordance with the law governing such publications, and in connection therewith to employ agents to conduct and handle the same sell advertising space therein and to do all things deemed necessary or expedient in connection therewith.

(e) To encourage and assist in the organization of apartment house owners and operators in the State of Washington.

Its powers are stated in its articles as follows:

(a) To make, use and alter a corporate seal at its pleasure in such forms as prescribed by the By-laws,

(b) To sue and be sued in any court of law,

(c) To purchase, own, hold, convoy [sic] and otherwise use and enjoy real and personal property of all kinds, and in connection therewith to acquire,

construct and maintain, and operate buildings and equipment deemed necessary or convenient in connection therewith.

(d) To appoint subordinate agents, and officers and employ labor in connection with its affairs and to fix their compensation.

(e) To charge and collect fees, dues, assessments, service and other charges of its members and to sell or forfeit the interests of any member for default in payment of the same,

(f) To make contracts, borrow money, issue notes, bills, and any other evidence of indebtedness and to mortgage or otherwise encumber its property to secure the payment of same.

(g) To establish branches in any one or more cities of the State of Washington under such conditions as may be prescribed by its By-laws.

(h) To do any and all things deemed necessary or convenient to carry out its purposes as permitted by Chapter 134 Law of 1907 and the general law not in conflict therewith,

(i) To enact and enforce By-laws for the governing of this corporation and its branches and to alter and amend same; and also to alter, amend, enlarge or diminish the purposes of this corporation,

(j) To establish, accumulate, and operate a surplus fund from any of its operations, including: Members' fees, charges and dues; and services rendered members and supplies purchased and handled for its members; and to distribute such fund to members in accordance with the provisions of its By-laws.

Its bylaws during the year 1938 contained the following:

ARTICLE II.

Section 1. The aim and objects of this corporation shall be: To promote interests of its members; their mutual protection; to promote efficiency in the conduct of their business; to eliminate unwise and unfair business practices; to protect its members against unfair or unjust taxes and legislative enactments; to endeavor to procure sound and just legal protection to the apartment industry; to advise and assist the members in the conduct in their own business; to promote standards and ethical business practices; and to assist in the formation of similar associations in other cities of the State of Washington; in order that the apartment business be permanently established on a sound and economic basis. To that end, the objects and powers stated in the Articles of Incorporation are hereby confirmed and adopted as a part of these By-laws. [95]

* * * * *

ARTICLE XII.

* * * * *

Section 5. Committees: When so directed by the Board, Standing Committees shall be appointed by the President to serve for the same length of time as the regularly elected officers and shall be as follows:

(a) Legislative Committee: This committee shall

consist of three (3) members, whose duty it shall be to keep in touch with the legislative bodies of the City, County and State in order that the best interests of the members and the apartment industry be properly protected. All matters pertaining to legislative functions, coming before meetings of the Association, shall be referred to this Committee before action is taken, and the Committee shall report to the Board of Trustees the results of its deliberations, and such reports shall be acted upon immediately.

* * * * *

(e) Rental Committee: This Committee shall consist of three (3) members whose duty it shall be to keep in touch with the rental situation so that the members may be kept advised of the true condition as to vacancies, rentals, the trend of supply and demand and all such information as may be of value to the Association in rendering accurate service to its members.

* * * * *

(h) Supplies and Services Committee: This committee shall consist of three (3) members, either within or without the Board of Trustees, to supervise supplies furnished or services rendered to members, and to fix the price thereof, subject to the approval of the Board.

* * * * *

ARTICLE XIII.

Official Publication

Section 1. The official publication of this Association is and shall be "Apartment Journal," which is hereby accepted, taken, and declared to be owned, operated and published by this Association and distributed to the members in good standing from time to time and no member can obtain any equity, interest or right therein extending beyond his membership as provided in these By-laws.

Section 2. This publication shall be controlled and managed by the Board of Trustees of this Association under the direct management of the Executive Secretary, titled Managing Editor, assisted by such associate editors as may be from time to time appointed by the President and approved by the Board of Trustees.

Section 3. The Managing Editor with the approval of the President is authorized to employ all additional labor and incur all additional expense incident to publications, mailing and delivery to each member monthly a copy of such publications, all subject to the approval of the Board of Trustees.

* * * * *

ARTICLE XV.

Supplies and Services

Section 1. The Board of Trustees shall have power to authorize the purchase and to otherwise acquire any and all kinds of supplies, goods, wares,

and mer- [96] chandise used or useful by its members in connection with their business, consolidating such purchases in their discretion in quantity purchases, in harmony with members' requirements, or orders and withdrawals therefrom, for the purpose of obtaining wholesale prices and reductions; and to dispose of, handle, transport, store, warehouse, sell and deliver same to the members of this Association as required by them; and to fix the price thereof and charge and collect of such member such cost of same plus a service charge or fee for so handling the same; and to set aside any profits derived therefrom in a surplus fund to be established by resolution of the Board of Trustees.

Section 2. The Association will employ and furnish to its members the services of individuals for apartment shopping, and any other service for which there is deemed a general or pressing demand, at the actual cost of such service plus a service charge therefor to be fixed by resolution of the Board of Trustees. All monies received shall be deposited to the credit of the Association in such bank or other depository designated by the Board.

* * * * *

ARTICLE XVI.

Surplus Fund

Section 1. The Board of Trustees shall by resolution establish a surplus fund in a bank or other depository of its selection and may change such

depository at its discretion. Into this fund shall be paid and deposited all monies and monetary profits received from fees, dues, service charges, journal advertising and from any other source or sources which are not deemed necessary to retain in the commercial banking account of the Association to meet the operating expenses thereof and for working capital. Such surplus fund shall be jointly owned by all of the members of the Association as such in good standing, but such funds shall be subject to the exclusive control, use, disposal and disbursement by the Board of Trustees.

Section 2. In its discretion, the Board of Trustees may use this fund or any part thereof to acquire and establish an office, meeting place, and other facilities for the handling of the business of the Association, and otherwise for the use and benefits of its members, and may distribute such fund, or any part thereof, pro-rata to the members of the Association in good standing, contributing to the source of such fund through the purchase of supplies handled or contracted for by the Association.

ARTICLE XVII.

Labor Relations

Section 1. Labor Relations Committee: For the purpose of dealing with labor unions and settling labor disputes between the members and their employees, there is hereby created a Labor Relations Committee to be composed of three (3) members elected by the Board of Trustees. Such committee

shall meet with the Committee of labor unions for the purpose of arriving at agreements covering uniform practices and standards of hours and wages applicable to the different types of buildings and employment in the apartment industry. Such committee shall also hear all disputes and complaints arising at any time or from time to time between any member and employee. Any and all negotiations and agreement by such committee with any labor union shall be referred to the Board of Trustees and approved by a majority of the members at any meeting before the same shall become binding on this Association and its members. [97]

Section 2. Labor Representative: The Executive Secretary of this Association shall be and is hereby made the Labor Representative of this Association for its members and shall have and exercise all of the functions as such, subject to control by the Labor Relations Committee and the approval of the Board of Trustees.

Petitioner exercised substantially all the foregoing functions. It acted as a clearing house for information about tenants, about the operation of apartment houses, and about legislation affecting the business; it gave counsel and advice, and did what it could to promote the common welfare of the members. On its own machine, it printed specially designed forms, such as rent receipts and rental agreements for use in its locality and sold them to members at cost, plus a small margin, the price being less than a member would ordinarily pay if he were

independently to have the forms printed. It gets information about prices and buys articles, such as electric light bulbs and other electrical equipment, for its members in larger quantities and at lower unit prices than they would ordinarily pay, and sells them to the members at prices slightly above cost. In 1938 it bought at a 36 percent discount and sold to its members at 32 percent discount. The price does not include any portion of overhead expenses, such expenses, as for rent, furniture, equipment, and salaries, being paid entirely out of dues. In 1938 it published a journal and distributed it among its members. By this means it disseminated information more inexpensively than by letter or pamphlet. The journal carried advertising of supply houses, light and power, and telephone companies; it did not pay for itself, and was discontinued in 1939. It represents members in labor disputes, and negotiations and hearings are held in its rooms.

Petitioner has no purpose or intention of making a profit, but it tries to have a small surplus to assure its continuance. It maintains a general fund comprising all its receipts, including dues and sales and advertising receipts, and from it payment is made of all expenses, such as salaries and equipment. In 1938 the fund grew and then remained stationary.

As shown by its 1938 return, petitioner's gross receipts were \$10,814.17, comprised of dues \$6,943, journal \$2,519.09, and merchandise sales \$1,352.08; and its expenses were \$9,873.08, comprised of gen-

eral expense \$3,641.96, journal \$4,604.96, and merchandise purchases and expenses \$1,626.16.

OPINION

Sternhagen: The petitioner claims exemption under Revenue Act of 1938, section 101 (7), as a business league not organized for profit and no part of the net earnings of which inures to the benefit of any [98] private shareholder or individual. The claim, we think, was properly denied by the Commissioner. The petitioner's purchase of supplies at a discount and its resale to the members at less than they would otherwise pay is a business operation and its advantage is the sort of profit inuring to the benefit of the members which is preclusive of the statutory exemption. The fact that the corporation was organized under the state laws relating to non-profit corporations and the officers had no intention to conduct its operations at a profit is less important than its actual operations. Under article XV of the bylaws supplies may be sold to members at a price which includes a service charge or handling fee, the profits from which may be set aside in a surplus fund; and by article XVI the surplus fund may be distributed among the members. Petitioner was a cooperative buying organization, withholding a margin, however small. Such cooperatives are not among the exempt organizations of the statute, as are farmers' cooperatives, which buy supplies and turn them over to members at actual cost plus necessary expenses. Sec. 101 (12).

The determination is sustained. Uniform Printing & Supply Co. v. Commissioner, 33 Fed. (2d) 445; Northwestern Jobbers' Credit Bureau v. Commissioner, 37 Fed. (2d) 880; Produce Exchange Stock Clearing Association, Inc. v. Helvering, 71 Fed. (2d) 142; Retailers Credit Association of Alameda County v. Commissioner, 90 Fed. (2d) 47; Northwestern Municipal Association, Inc. v. United States, 99 Fed. (2d) 460; Park West-Riverside Associates, Inc. v. Helvering, 110 Fed. (2d) 1022; Durham Merchant's Association v. United States, 34 Fed. Supp. 71.

Decision will be entered for the respondent. [99]

Copy

United States Board of Tax Appeals
Washington

Docket No. 106666.

APARTMENT OPERATORS ASSOCIATION,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

In accordance with the Board's report, promulgated January 29, 1942, it is

Ordered and Decided that there are deficiencies

for 1938 of \$107.49 in income tax and \$103.19 in excess profits tax.

Entered Jan. 30, 1942.

[Seal] (S) J. E. MURDOCK
Member. [100]

In the United States Circuit Court of Appeals
For the Ninth Circuit

Docket No. 106666

APARTMENT OPERATORS ASSOCIATION,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW OF BOARD DECISION
IN THE UNITED STATES BOARD
OF TAX APPEALS

Petition of the Apartment Operators Association
for Review by the Circuit Court of Appeals for
the Ninth Circuit of a Decision by the United
States Board of Tax Appeals.

Taxpayer, the petitioner in this cause, by Edwards Merges, its counsel, hereby files its petition for review by the Circuit Court of Appeals for the Ninth Circuit, of the decision of the United States Board of Tax Appeals rendered January 29, 1942, 46 BTA #31, determining that the petitioner is not

exempt under the Revenue Act of 1938, Sec. 101 (7), and that it is accordingly liable for Income and Excess Profits taxes for the year 1938, and respectfully shows:

I.

The petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Washington, with its principal office in Seattle, Washington. The petitioner made return out of which the tax in question arose, to the office of the Collector of Internal Revenue at Tacoma, which is within the Ninth Circuit.

II.

The controversy involves the question of whether or not the petitioner is entitled to exemption under the Revenue Act of 1938 Sec. 101 (7) as a business league not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual. [101]

The petitioner is a corporation organized under the laws of the State of Washington as a non-profit corporation. It was so incorporated on November 3, 1937. Its membership is limited to Apartment owners and/or operators, and it has no capital stock. It pays no dividends, and its purpose is to advance and protect the business interests of its members. The petitioner advises the membership of tenants at the request of individual members without charge. It represents members in negotiations with Unions, and gives them advice about legislation affecting their business, and does generally what it can to

promote the common welfare of its members. It has a mimeographing machine on which it prints rental receipts and agreements, and sells them to members at cost and a small margin. It buys and sells to its members electric light bulbs at prices slightly above cost. It published a journal and distributed it to its members for the purpose of disseminating information regarding apartment operation. The Journal carried some advertising. The petitioner has no purpose or intention of making a profit in its operation and it is maintained through dues. It has a small surplus which has never been distributed to the membership.

The respondent assessed Income and Excess Profits taxes for the year 1938 in the amounts of \$107.49 and \$103.19 respectively.

III.

The said taxpayer association being aggrieved by the Findings of Fact and Conclusions of Law, and the Opinion of the Board, and by its decision entered pursuant thereto, desires to obtain a review thereof by the Circuit Court of Appeals for the Ninth Circuit.

IV.

The petitioner assigns as error the following acts and omissions of the Board of Tax Appeals:

1. The failure to hold that petitioner is exempt as a business league under the Revenue Act of 1938, Sec. 101 (7). [102]
2. The failure to hold that the petitioner is en-

gaged in a business not ordinarily carried on for profit.

3. The failure to hold that the petitioner's purchase of supplies and re-sale to its members is incidental to the main purpose of its existence.

4. The failure to hold that the petitioner is an organization where the members have a common business interest organized primarily to advance and protect the business interests of its members, and that it is not a cooperative buying organization.

EDWARDS MERGES

Counsel for Petitioner,
1012 Lowman Building,
Seattle, Washington.

(Duly verified.)

[Endorsed]: U.S.B.T.A. Filed Apr. 23, 1942. [103]

Copy

[Title of Circuit Court of Appeals and Cause.]

ACKNOWLEDGMENT OF SERVICE

We hereby acknowledge service of a copy of the Petition for Review of Board Decision in the United States Board of Tax Appeals, and Notice of Filing the same, in the above entitled cause. April 18, 1942.

(S) J. P. WENCHEL-W

Chief Counsel of the Bureau
of Internal Revenue, Wash-
ington, D. C.

[Endorsed]: U.S.B.T.A. Filed April 23, 1942. [104]

[Title of Circuit Court of Appeals and Cause.]

ASSIGNMENTS OF ERROR

Petitioner assigns as error the following facts and omissions of the Board of Tax Appeal:

1. The failure to hold that petitioner is exempt as a business league under the Revenue Act of 1938, Sec. 101 (7).

2. The failure to hold that the petitioner is engaged in a business not ordinarily carried on for profit.

3. The failure to hold that the petitioner's purchase of supplies and re-sale to its members is incidental to the main purpose of its existence.

4. The failure to hold that the petitioner is an organization where the members have a common business interest organized primarily to advance and protect the business interests of its members, and that it is not a cooperative buying organization.

Dated this 28 day of April, 1942.

EDWARDS MERGES

Attorney for Petitioner.

Service of a copy of the within assignments of error is hereby admitted this 23rd day of June, 1942.

J. P. WENCHEL-W

Chief Counsel, Bureau of Internal Revenue,

Counsel for Respondent on Review.

[Endorsed]: U.S.B.T.A. Filed Jun. 23, 1942. [105]

United States Board of Tax Appeals
Washington

Docket No. 106666

APARTMENT OPERATORS ASSOCIATION,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 106, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 1st day of July, 1942.

[Seal]

B. D. GAMBLE

Clerk, United States Board of
Tax Appeals.

[Endorsed]: No. 10203. United States Circuit Court of Appeals for the Ninth Circuit. Apartment Operators Association, a corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of the United States Board of Tax Appeals.

Filed July 24, 1942.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit.

No. 10203

Docket No. 106666.

APARTMENT OPERATORS ASSOCIATION,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

POINTS TO BE RELIED ON UPON APPEAL

Comes now the petitioner, and notes herewith the following points upon which he intends to rely on appeal:

1. That the petitioner is exempt as a business league under the Revenue Act of 1938, Section 101 (7).

2. That the petitioner is engaged in a business not ordinarily carried on for profit.

3. That the petitioner's purchase of supplies and re-sale to its members is incidental to the main purpose of its existence.

4. That the petitioner is an organization in which the members have a common business interest, organized primarily to advance and protect the business interests of its members.

Dated this 5th day of August, 1942.

EDWARDS MERGES

Attorney for Petitioner.

[Endorsed]: Filed Aug. 8, 1942.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PARTS OF RECORD TO
BE PRINTED

Comes now the petitioner, and designates the following portions of the record to be printed:

1. Petition.
2. Answer.
3. Transcript of Hearing.
4. Findings of Fact and Opinion.
5. Decision.
6. Petition for Review.
7. Assignments of Error.

Dated this 5th day of August, 1942.

EDWARDS MERGES

Attorney for Petitioner.

[Endorsed]: Filed Aug. 8, 1942.